

## WORKMEN'S COMPENSATION ACT 30 OF 1941

**NOTE: The whole of this Act has been repealed by section 100 (1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, but has been retained for the convenience of users.**

[ASSENTED TO 5 MAY 1941]

[DATE OF COMMENCEMENT: 1 MARCH 1942]

(Except ss. 27 to 36 inclusive: 1 January 1943)

*(Signed by the Governor-General in Afrikaans)*

### as amended by

Workmen's Compensation Amendment Act 27 of 1945  
Finance Act 48 of 1947  
Workmen's Compensation Amendment Act 36 of 1949  
Workmen's Compensation Amendment Act 5 of 1951  
Workmen's Compensation Amendment Act 51 of 1956  
Railways and Harbours Superannuation Fund Act 39 of 1960  
Workmen's Compensation Amendment Act 7 of 1961  
Workmen's Compensation Amendment Act 21 of 1964  
Workmen's Compensation Amendment Act 58 of 1967  
Pension Laws Amendment Act 98 of 1969  
Workmen's Compensation Amendment Act 9 of 1970  
Second Black Laws Amendment Act 27 of 1970  
Workmen's Compensation Amendment Act 60 of 1971  
Insolvency Amendment Act 6 of 1972  
Workmen's Compensation Amendment Act 11 of 1974  
Workmen's Compensation Amendment Act 28 of 1977  
Workmen's Compensation Amendment Act 8 of 1979  
Workmen's Compensation Amendment Act 24 of 1981  
Workmen's Compensation Amendment Act 29 of 1984  
Transfer of Powers and Duties of the State President Act 97 of 1986  
Workmen's Compensation Amendment Act 35 of 1987  
Workmen's Compensation Amendment Act 40 of 1990  
Workmen's Compensation Amendment Proclamation 45 of 1990  
[as it applies in the Republic]  
Transfer of Powers and Duties of the State President Act 51 of 1991  
Population Registration Act Repeal Act 114 of 1991  
Abolition of Racially Based Land Measures Act 108 of 1991

### ACT

**To amend and consolidate the laws relating to compensation for disablement caused by accidents to or industrial diseases contracted by workmen in the course of their employment, or for death resulting from such accidents and diseases.**

#### INTRODUCTORY

#### 1 Division of Act

This Act is divided as follows:-

##### CHAPTER I

Definitions and application of the Act

Sections *two to eleven*

##### CHAPTER II

Administration

Sections *twelve to twenty-six*

	CHAPTER III
Right to compensation	Sections <i>twenty-seven to thirty-six</i>
	CHAPTER IV
Liability for compensation	Section <i>thirty-seven</i>
	CHAPTER V
Amount and method of compensation	Sections <i>thirty-eight to forty-nine</i>
	CHAPTER VI
Recovery of compensation:	
(A) Notice of accidents	Sections <i>fifty to fifty-three</i>
(B) Lodging of claims	Sections <i>fifty-four and fifty-five</i>
(C) Procedure for determination	Sections <i>fifty-six to sixty-three</i> of claims
	CHAPTER VII
The Accident and Reserve Funds:	
(A) Establishment of funds	Sections <i>sixty-four to sixty-seven</i>
(B) Rendering of wage returns	Section <i>sixty-eight</i> by employers
(C) Levying and recovery of	Sections <i>sixty-nine</i> assessments and
	other charges to <i>seventy-four</i>
	CHAPTER VIII
Medical Aid	Sections <i>seventy-five to eighty-one</i>
	CHAPTER IX
Compensation for Certain Widows	Sections <i>eighty-two to eighty-eight</i>
	[Heading amended by s. 1 (2) of Act 114 of 1991.]
	CHAPTER X
Industrial Diseases	Sections <i>eighty-nine to ninety-four</i>
	CHAPTER XI
Miscellaneous	Sections <i>ninety-five to one hundred and ten</i>

## CHAPTER I

### DEFINITIONS AND APPLICATION OF THE ACT (ss 2-11)

#### 2 Definitions

In this Act, unless inconsistent with the context-

'**accident**' means an accident arising out of and in the course of a workmen's employment and resulting in a personal injury;

'**accident fund**' means the fund established under section *sixty-four*;

'**actuary**' means a Fellow of an institute or a faculty, society or chapter of actuaries approved by the Minister;

[Definition of 'actuary' substituted by s. 1 (a) of Act 29 of 1984.]

'**airman**' means a workman employed in any capacity in an aircraft;

'**agriculture**' means any employment on a farm connected with farming, including horticulture and forestry irrespective of whether such employment necessitates the employee temporarily leaving the farm in the course of his employment;

'**annual wages**' means-

(a) the amount of wages referred to in paragraph (a) of subsection (1) of

- section *sixty-eight* if accepted by the commissioner as correct; or
- (b) the amount of wages ascertained by the commissioner where he is satisfied that the amount referred to in the said paragraph (a) is less than the amount actually paid; or
- (c) .....
- [Para. (c) deleted by s. 1 (b) of Act 29 of 1984.]
- (d) the estimate of wages made by the commissioner in terms of subsection (4) of the said section;

**'assessment'** means an assessment, or a provisional assessment, or any instalment of an assessment, made in terms of Part (C) of Chapter VII;

**'Black' .....**

[Definition of 'Black' amended by s. 1 (g) of Act 51 of 1956, substituted by s. 1 (c) of Act 29 of 1984 and deleted by s. 1 (2) of Act 114 of 1991.]

**'business'** means any industry, undertaking, trade or occupation, or any activity in which any workman is employed;

**'child'** means a son or daughter under the age of eighteen years and includes an illegitimate child of a workman or his wife, a posthumous child, a step-child and an adopted child if the commissioner is satisfied that the child was in fact adopted;

[Definition of 'child' amended by s. 1 (a) of Act 51 of 1956 and substituted by s. 1 (b) of Act 11 of 1974.]

**'commissioner'** means the Workmen's Compensation Commissioner appointed under subsection (1) of section *twelve*;

**'compensation'** means compensation under this Act;

**'continental shelf'** means the continental shelf referred to in section 7 of the Territorial Waters Act, 1963 (Act 87 of 1963);

[Definition of 'continental shelf' inserted by s. 1 (a) of Act 9 of 1970.]

**'contractor'** means a person referred to as a contractor in section *nine*;

**'date of commencement of this Act'** in relation to the application of this Act in the territory, means the date of commencement of the Workmen's Compensation Amendment Act, 1956;

[Definition of 'date of commencement of this Act' inserted by s. 1 (b) of Act 51 of 1956.]

**'dependant'** means a person referred to as a dependant in section *four*;

**'disablement'** means disablement for employment or permanent injury or serious disfigurement;

**'earnings'** means the average remuneration of the workman at the time of the accident, calculated in the manner provided in section *forty-one*;

**'employer'** means a person defined as an employer in section *five* and includes a principal;

**'employer individually liable'** means an employer who in terms of section *seventy* is exempt from paying assessments to the accident fund;

[Definition of 'employer individually liable' amended by s. 1 (a) of Act 36 of 1949.]

**'employers' organization'** means an employers' organization as defined in section 1 of the Labour Relations Act, 1956 (Act 28 of 1956), or the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952 of the territory);

[Definition of 'employers' organization' amended by s. 1 (c) of Act 51 of 1956 and substituted by s. 1 (d) of Act 29 of 1984.]

**'excavation' .....**

[Definition of 'excavation' deleted by s. 1 (d) of Act 51 of 1956.]

**'excavation work' .....**

[Definition of 'excavation work' deleted by s. 1 (d) of Act 51 of 1956.]

**'financial year'** means the period between the first day of March in any year and the last day of February in the following year, both dates included;

[Definition of 'financial year' substituted by s. 1 (a) of Act 11 of 1974.]

**'fixed date'** means the date fixed by proclamation in terms of the proviso to section *one hundred and ten* and in relation to the application of this Act in the territory, means the date fixed by proclamation in terms of the second proviso to section *thirty-two* of the Workmen's Compensation Amendment Act, 1956;

[Definition of 'fixed date' amended by s. 1 (e) of Act 51 of 1956.]

**'Gazette' .....**

[Definition of 'Gazette' inserted by s. 1 (f) of Act 51 of 1956 and deleted by Proclamation 45 of 1990.]

**'institution'** includes any charitable, educational or like institution, whether conducted by the State or by any other body or person;

**'local authority'** means any divisional council, city council, municipal council, borough council, or town council;

**'machinery' .....**

[Definition of 'machinery' inserted by s. 1 (b) of Act 36 of 1949 and deleted by s. 1 (e) of Act 29 of 1984.]

**'medical aid'** means medical, surgical, or hospital treatment, skilled nursing services, any special remedial treatment approved by the commissioner, and the supply and repair of any artificial part of the body or any device necessitated by disablement;

[Definition of 'medical aid' amended by s. 1 of Act 27 of 1945.]

**'medical practitioner'** means a person duly registered as such under the law relating to the registration of medical practitioners in the Republic;

**'Minister'** means the Minister of Manpower or any other Minister of State acting in his stead, or any other Minister of State to whom the State President may from time to time assign the administration of this Act;

[Definition of 'Minister' substituted by s. 1 (f) of Act 29 of 1984.]

**'mutual association'** means a mutual association licensed as such under subsection (1) of section *ninety-five*;

**'natural resources'** means natural resources referred to in section 7 of the Territorial Waters Act, 1963 (Act 87 of 1963);

[Definition of 'natural resources' inserted by s. 1 (b) of Act 9 of 1970.]

**'pension'** means a pension referred to in section *thirty-nine* or in paragraph (a), (b), (c) or (d) of subsection (1) of section *forty*;

**'periodical payment'** means a periodical payment of compensation in respect of temporary disablement;

**'person under disability'** means a minor, a lunatic, or any person who by law is subject to curatorship or tutorship;

**'prescribed'** means prescribed under this Act or by regulation;

**'principal'** means a person referred to as the principal in section *nine*;

**'provincial or local division of the Supreme Court' .....**

[Definition of 'provincial or local division of the Supreme Court' inserted by s. 1 (h) of Act 51 of 1956 and deleted by Proclamation 45 of 1990.]

**'regulation'** means a regulation made under this Act;

**'Republic'** .....

[Definition of 'Republic', previously definition of 'Union', inserted by s. 1 (k) of Act 51 of 1956 and deleted by Proclamation 45 of 1990.]

**'reserve fund'** means the fund established under section *sixty-six*;

**'scheduled disease'** means any disease specified in the Second Schedule to this Act;

**'seaman'** means a workman within the meaning of section *three* employed in any capacity on board a ship by the owner or master;

**'serious and wilful misconduct'** means-

- (a) drunkenness; or
- (b) a contravention of any law or statutory regulation made for the purpose of ensuring the safety or health of workmen or of preventing accidents to workmen if the contravention is committed deliberately or with a reckless disregard of the terms of such law or regulation; or
- (c) any other act or omission which the commissioner, having regard to all the circumstances, considers to be serious and wilful misconduct;

**'ship'** means a vessel of any description used in navigation, other than an aircraft; and **'South African ship'** means a ship which-

- (a) is registered in the Republic under any law relating to merchant shipping and is not registered in any other country under a similar law; or
- (b) is owned or chartered by a person whose principal office or place of business is in the Republic, or by a person who resides in the Republic;

**'silicosis'** means a pathological condition of the lungs due to the inhalation of silicon dioxide;

**'South African aircraft'** means any aircraft registered or licensed in the Republic, the owner of which has a place of business in the Republic;

**'temporary partial disablement'** in relation to a workman means the temporary inability of such workman as the result of an accident in respect of which compensation is payable to perform the whole of the work at which he was employed at the time of such accident or to resume work at a rate of earnings not less than that which he was receiving at the time of such accident;

**'temporary total disablement'** in relation to a workman means the temporary inability of such workman as the result of an accident in respect of which compensation is payable, to perform the work at which he was employed at the time of such accident, or work similar thereto;

**'territory'** .....

[Definition of 'territory' inserted by s. 1 (i) of Act 51 of 1956 and deleted by Proclamation 45 of 1990.]

**'this Act'** includes the schedules thereto and any regulation;

**'trade union'** means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act 28 of 1956), and which has complied with the provisions of section 4A (1), section 8 (5) read with section 8 (8), and section 11 of that Act, or the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952 of the territory).

[Definition of 'trade union' amended by s. 1 (j) of Act 51 of 1956 and substituted by s. 1 (i) of Act 29 of 1984.]

### 3 Definition of workman

(1) Subject to the provisions of subsection (2) and unless inconsistent with the context, 'workman' in this Act means any person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes-

- (a) any person whose occupation is conveying for gain, persons or goods by means of any vehicle, ship or aircraft, the use of which he has obtained under any contract other than a purchase or hire-purchase agreement, whether or not the remuneration of such person under such contract be partly an agreed sum and partly a share in takings, but does not include any such person whose remuneration is fixed solely by a share in takings;
- (b) any person or class of persons excluded from the scope of this Act by the provisions of subsection (2) (b), (f) (ii) or (g), if the employer of such person or class of persons has made special arrangements with the commissioner to that effect and complied with the conditions prescribed by the commissioner in regard thereto;

[Para. (b) substituted by s. 1 (a) of Act 58 of 1967.]

- (c) when a workman is dead or under disability, his representative, his dependants and any other person to whom or for whose benefit compensation is payable:
- (d) .....

[Para. (d) deleted by s. 2 (a) of Act 29 of 1984.]

Provided that if in any claim for compensation under this Act it appears to the commissioner that the contract of service or apprenticeship or learnership under which the injured workman was working at the time when the accident causing the injury happened was invalid for any reason whatever, the commissioner may in his discretion deal with the matter as if such contract had at the time aforesaid been valid.

(2) The following persons shall not be regarded for the purposes of this Act as workmen-

- (a) (i) persons in military service or undergoing training within the meaning of the Defence Act, 1957 (Act 44 of 1957), who are not members of the Permanent Force of the South African Defence Force;
- (ii) members of the Permanent Force of the South African Defence Force while on 'service in the defence of the Republic' as defined in section *one* of the said Act; and
- (iii) members of the South African Police Force while employed in terms of section *seven* of the Police Act, 1958 (Act 7 of 1958), on service which is 'service in defence of the Republic' as so defined;
- (b) persons whose annual earnings calculated in the manner set forth in section 41 exceed R24 000 or, from a date<sup>i\*</sup> determined by the Minister by notice in the *Gazette*, such higher amount<sup>ii\*</sup> as he may so determine;

[Para. (b) substituted by s. 1 (b) of Act 58 of 1967, by s. 2 of Act 11 of 1974, by s. 1 of

Act 28 of 1977, by s. 1 of Act 24 of 1981 and by s. 2 (b) of Act 29 of 1984, amended by Proclamation R24 of 28 February, 1986 and by ss. 46 and 47 of Act 97 of 1986 and substituted by s. 1 of Act 35 of 1987.]

- (c) persons employed casually and not for the purpose of the employer's business;
  - (d) outworkers, that is to say, persons to whom articles or materials are given out by employers to be made up, cleaned, washed, ornamented, finished, repaired, adapted for sale, altered or otherwise worked with on premises not under the control of the employer;
  - (e) persons who contract for the carrying out of work and themselves engage other persons to perform such work unless they are included in the statement of annual wages referred to in section *sixty-eight* and are regarded as workmen by the commissioner in terms of paragraph (d) of subsection (1) of this section;
  - (f) domestic servants employed as such-
    - (i) in a private household; or
    - (ii) in a boarding house or institution in which are ordinarily employed not more than five such servants;
  - (g) persons employed as seamen or airmen, excluding such persons employed in circumstances referred to in section 10 (1A) and save as provided in section 11;
 

[Para. (g) substituted by s. 2 of Act 9 of 1970.]
  - (h) persons employed outside the Republic, save as provided in sections *ten* and *eleven*; or
  - (i) .....
- [Para. (i) deleted by s. 1 (c) of Act 58 of 1967.]

(3) An employer who has made any special arrangement contemplated in paragraph (b) of subsection (1) shall not be entitled to withdraw or depart therefrom unless he has not later than the first day of July in any year, given notice to the commissioner of his intention to terminate such arrangement.

(4) Any notice under subsection (3) shall operate from the first day of January following the date of the notice and from that date the person or class of persons in respect of whom or which the arrangement was made and in respect of whom or which such notice was given shall, unless otherwise included in the definition of 'workman', cease to be workmen for the purposes of this Act.

[S. 3 amended by s. 2 of Act 27 of 1945, by s. 28 of Act 48 of 1947, by s. 2 of Act 36 of 1949, by s. 2 of Act 51 of 1956 and by s. 1 of Act 7 of 1961 and substituted by s. 1 of Act 21 of 1964.]

#### **4 Dependants of a workman**

(1) Subject to the further provisions of this section and unless inconsistent with the context, 'dependant' in this Act means-

- (a) the widow or invalid widower, if married to the workman at the time of the accident;
- (b) if there is no widow who, at the time of the accident, was wholly or partly dependent upon the workman for the necessaries of life any woman with whom the workman was in the opinion of the commissioner living as man

and wife at the time of the accident;

[Para. (b) amended by s. 3 of Act 27 of 1945.]

- (c) any child: Provided that in the case of an adopted child the commissioner is satisfied that the child was adopted prior to the accident;
- (d) a parent or step-parent or an adoptive parent who adopted such workman if the commissioner is satisfied that the workman was in fact adopted and in either case that the workman was adopted prior to the accident;
- (e) a son or daughter (other than a child as defined): a brother, sister, half-brother, or half-sister: a sister or brother of a parent: a grand-parent or grand-child; or
- (f) any other person who, in the opinion of the commissioner, was at the time of the accident wholly or partly dependent upon the workman for the necessaries of life:

[Para. (f) substituted by s. 2 of Act 28 of 1977.]

Provided that-

- (i) a dependant other than one referred to in paragraph (f) shall not be entitled to compensation unless, at the time of the accident, he was wholly or partly dependent upon the workman for the necessaries of life;
- (ii) any right to compensation shall *ipso facto* cease upon the death of the dependant to whom such compensation was payable; and
- (iii) unless the contrary is proved, the widow or child of a workman or a person referred to in the second proviso to section 40 (1) (c) who would, if under eighteen years of age, be the child of the workman, shall be deemed to be dependent for the necessaries of life upon such workman.

[Para. (iii) amended by s. 3 of Act 51 of 1956 and substituted by s. 3 of Act 11 of 1974.]

(2) .....

[Sub-s. (2) deleted by s. 1 (2) of Act 114 of 1991.]

(3) For the purposes of this Act 'widow' includes a woman who was a participant in a customary union according to indigenous law and custom, where neither the man nor the woman was a party to a subsisting marriage.

[Sub-s. (3) substituted by s. 1 (2) of Act 114 of 1991.]

## **5 Definition of 'employer'**

(1) Subject to the further provisions of this section and unless inconsistent with the context, 'employer' in this Act means a person who employs a workman and includes the State and any person controlling the business of an employer.

(2) If the services of a workman are temporarily lent or let on hire by his employer to another person, such employer shall be deemed to continue to be the employer of such workman whilst he is working for that other person.

(3) In respect of a workman whose occupation is conveying for gain any persons or goods by means of any vehicle, ship or aircraft, the use of which the workman obtained from some other person under a contract other than a purchase or hire-purchase agreement, such other person shall for the purposes of this Act be deemed to be the employer.

(4) In respect of a workman employed by a club or an association of persons, the members of the managing committee, the secretary or other responsible officer of the association or club shall be deemed to be the employer.

(5) For the purposes of the giving or receiving of statements, notices or other documents under this Act, the term 'employer' shall include the manager, secretary, accountant, treasurer, duly authorized agent or other responsible person.

**6 Application of Act in respect of accidents and industrial diseases**

Subject to the provisions of sections *twenty-seven, eighty-nine and one hundred and ten*, this Act shall apply in respect of accidents happening and scheduled diseases contracted on or after the fixed date.

**7 Substitution of compensation for other legal remedy**

From and after the fixed date-

- (a) no action at law shall lie by a workman or any dependant of a workman against such workman's employer to recover any damages in respect of an injury due to accident resulting in the disablement or the death of such workman; and
- (b) no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of any such disablement or death.

[Para. (b) amended by s. 4 of Act 27 of 1945.]

**8 Recovery from third party by workman of damages and by commissioner or employer of compensation paid**

(1) Where an accident in respect of which compensation is payable, was caused in circumstances creating a legal liability in some person other than the employer (hereinafter referred to as the third party) to pay damages to the workman in respect thereof-

- (a) the workman may both claim compensation under this Act and take proceedings in a court of law against the third party to recover damages: Provided that where any such proceedings are instituted, the court shall in awarding damages, have regard to the amount which, by virtue of the provisions of paragraph (b), is likely to become payable to the commissioner or the employer individually liable (hereinafter referred to as the employer), as the case may be, by the third party; and
- (b) the commissioner or the employer by whom compensation is payable shall have a right of action against the third party for the recovery of the compensation he is obliged to pay under this Act as a result of the accident, and may exercise such right either by intervening in proceedings instituted by the workman against the third party or by instituting separate proceedings: Provided that the amount recoverable in terms of this paragraph shall not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the workman but for the provisions of this Act.

(2) The workman shall before instituting proceedings under subsection (1) in writing notify the commissioner or the employer, as the case may be, of his intention to do so, and shall likewise notify the commissioner or the employer if he decides to abandon such proceedings or to relinquish or settle his claim for damages, and shall in connection with any such notification furnish such particulars as the commissioner may require.

(3) Notwithstanding anything contained in any law, no claim by the commissioner

or by the employer under subsection (1) shall become prescribed until after the expiration of a period of three months from the date on which the commissioner has made an award of compensation certified by him to be a final award, provided written notice of the intention of the commissioner or the employer to institute proceedings in terms of this section has been given to the third party within twelve months of the receipt by the commissioner or the employer, as the case may be, of due notice of the accident.

(4) For the purposes of this section, 'compensation' includes the costs of medical aid and any amount paid or payable in terms of section 40 (2), 44 or 76 (2), and in the case of a continuing liability, also the capitalized value, as determined by the commissioner, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[Sub-s. (4) substituted by s. 3 (a) of Act 28 of 1977.]

(5) No proceedings in a court of law to recover damages against any person referred to in subsection (1) may be taken by a workman without the written consent of the commissioner unless he has lodged a claim for compensation.

[Sub-s. (5) substituted by s. 3 of Act 29 of 1984.]

(6) Notwithstanding anything to the contrary contained in any law and without derogating from the provisions of subsection (1) (a), the commissioner may enter into an agreement with the manager of the Motor Vehicle Assurance Fund referred to in section 5 of the Compulsory Motor Vehicle Insurance Act, 1972 (Act 56 of 1972), for the payment, in respect of a term mutually agreed upon between the commissioner and the said manager, of a global sum, similarly agreed upon between the commissioner and the said manager, by the said Fund to the commissioner, in lieu of all such compensation as the commissioner might, in terms of subsection (1) (b), otherwise have recovered from the said Fund or the authorized insurers contemplated in section 10 of the said Compulsory Motor Vehicle Insurance Act, 1972, in respect of claims arising during such term.

[Sub-s. (6) added by s. 3 (b) of Act 28 of 1977.]

[S. 8 amended by s. 5 of Act 27 of 1945, by s. 3 of Act 36 of 1949 and by s. 4 of Act 51 of 1956 and substituted by s. 2 of Act 21 of 1964.]

## **9 Principals and contractors**

(1) Where any person (in this section referred to as the principal) in the course of or for the purposes of his business contracts with any other person (in this section referred to as the contractor) for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the principal, any workman engaged upon such work shall be deemed to be the workman of the principal unless and until such contractor is in respect of such work assessed as an employer and has paid all assessments due by him to the accident fund, and any reference in this Act to the employer shall be deemed to be a reference to the principal, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

[Sub-s. (1) amended by s. 2 of Act 7 of 1961.]

(2) Where a principal has paid an assessment or compensation which, but for the provisions of subsection (1) he would not have been liable to pay he shall be entitled to reimbursement by the contractor to such extent as the commissioner finds that such

contractor would have been liable had he been deemed under this Act to be the employer of the workman.

(3) It shall be the duty of the principal to ensure that any assessment for which the contractor is liable is paid, and if any such principal fails to do so he shall be personally liable to pay such assessment to the commissioner and the provisions of this Act with regard to enforcing assessments shall apply to him. The principal shall be entitled to reimbursement by the contractor of any sum paid under this subsection.

(4) Where a principal, in terms of subsection (2) or (3) has paid to the commissioner any assessment or compensation he shall, unless he has been reimbursed by the contractor, be entitled to deduct an amount determined in accordance with subsection (2) from any moneys due by him to the contractor.

(5) Notwithstanding the preceding provisions of this section the workman or the commissioner may recover compensation from the contractor instead of the principal, and, in the event of failure to recover fully from one of them, may recover the balance from the other of them.

(6) This section shall not impose any liability on the principal in respect of any accident which occurs elsewhere than on or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

#### **10 Extra-territorial application of Act**

(1) Where an employer carries on business chiefly within the Republic and the usual place of employment of his workman is in the Republic, and an accident happens to his workman while the workman is temporarily employed by him out of the Republic, the workman shall be entitled to compensation in the same manner as if the accident had happened in the Republic: Provided that the amount of compensation shall be determined on the basis of the earnings which the workman, in the opinion of the commissioner, would have received if he had remained in the Republic: Provided further that this subsection shall cease to apply to a workman after he has been employed out of the Republic for a continuous period of twelve months, save by arrangement between the commissioner, the workman and the employer concerned, and subject to such conditions as the commissioner may determine.

(1A) Where an accident happens to a workman resident in the Republic, while employed in, on or above the continental shelf in connection with surveys, research prospecting or exploitation in respect of natural resources, this Act shall apply in respect of such accident as if it had happened in the Republic.

[Sub-s. (1A) inserted by s. 3 (a) of Act 9 of 1970.]

(2) (a) Where an employer carries on business chiefly outside the Republic and an accident happens to his workman ordinarily employed outside the Republic, but temporarily employed by him in the Republic, such workman shall not be entitled to compensation out of the accident fund unless the employer has previously agreed with the commissioner that such workman shall be entitled to compensation, and has paid assessment.

(b) Any such workman so employed for a continuous period of more than twelve months shall be deemed to be ordinarily employed by such employer in the Republic.

(3) Where by the law of the country in which an accident happens, a workman in the circumstances described in subsection (1) is entitled to compensation in respect of such accident, or where an accident happens to a workman in the circumstances described

in subsection (1A) or in the Republic and he would be entitled to compensation under the law of any other country as well as under this Act, he shall, by notice to the commissioner, elect to claim compensation either under this Act, or under the law of the other country: Provided that-

- (a) if he elects to claim compensation under this Act, he shall-
  - (i) present a claim under this Act, and
  - (ii) cede to the commissioner or the employer, as the case may be, his claim under the law of the other country, and if the amount recoverable under such other law exceeds the amount of the compensation under this Act, the cession shall be effective in respect of so much of the claim as equals the amount of such compensation;
- (b) if he elects to claim compensation under the law of the other country-
  - (i) where the amount so recoverable is less than the compensation which would have been payable under this Act, the commissioner may, in his discretion, award compensation not exceeding the amount of such difference; and
  - (ii) where the claim lies against an employer who has paid assessments, the commissioner shall reimburse such employer to the extent of the compensation payable under this Act.

[Sub-s. (3) amended by s. 3 (b) of Act 9 of 1970.]

#### **11 Application of Act to seamen and airmen**

This Act shall apply in respect of an accident (other than an accident referred to in section 10 (1A)) to a seaman or airman whose remuneration is not fixed solely by a share in the takings-

- (a) while employed on a South African ship or aircraft: Provided that if the accident happened outside the Republic, the provisions of the Act shall not apply unless the workman is a member of the crew of the ship or aircraft; or
- (b) subject to the provisions of subsection (2) of section *ten*, while employed in the Republic on any other ship or aircraft.

[S. 11 amended by s. 4 of Act 9 of 1970.]

### **CHAPTER II ADMINISTRATION (ss 12-26)**

#### **12 Appointment of commissioner and staff**

(1) Subject to the laws governing the public service, the Minister may from time to time, appoint any person to be the Workmen's Compensation Commissioner (in this Act referred to as the commissioner).

[Sub-s. (1) amended by s. 46 of Act 97 of 1986.]

(2) Subject to the laws governing the public service, the Minister, after consultation with the commissioner, may appoint such other persons as are in his opinion necessary to enable the commissioner to administer this Act.

[Sub-s. (2) amended by s. 6 of Act 27 of 1945.]

(3) The commissioner may, subject to any conditions imposed by the Minister, delegate any of his powers or functions to any person appointed under subsection (2) or to any officer on the fixed establishment of the public service.

[Sub-s. (3) added by s. 6 of Act 27 of 1945 and amended by s. 5 of Act 36 of 1949.]

### **13 Appointment of assessors**

(1) The Minister may, subject to the provisions of this section, appoint, for such period and on such conditions as he may in any case determine, so many persons (representing workmen and employers respectively) as he may deem necessary as assessors who shall in the manner prescribed assist the commissioner in the hearing of any objections lodged with him in terms of section *twenty-five*.

[Sub-s. (1) substituted by s. 6 of Act 36 of 1949.]

(2) An assessor may be appointed generally or may be designated to be an assessor in respect of any one or more areas or businesses.

[Sub-s. (2) substituted by s. 6 of Act 36 of 1949.]

(3) The number of assessors so appointed or designated to represent workmen shall be equal to the number of assessors so appointed or designated to represent employers.

[Sub-s. (3) substituted by s. 6 of Act 36 of 1949.]

(4) Before appointing any person as an assessor under subsection (1), the Minister shall consult the trade unions or employers' organizations which, in his opinion, are principally concerned.

[Sub-s. (4) substituted by s. 6 of Act 36 of 1949.]

(4)*bis* In addition to the assessors appointed under subsection (4), the Minister may appoint one or more medical practitioners (including a medical practitioner appointed under subsection (2) of section *twelve*) to be medical assessors.

[Sub-s. (4)*bis* inserted by s. 7 of Act 27 of 1945.]

(5) The Minister may remove from office any assessor who in his opinion has been guilty of misbehaviour or neglect of duty, or is unable adequately to fulfil the functions of an assessor.

(6) The Minister may appoint alternate assessors to act during the temporary inability of any assessor to carry out his duties, and the provisions of this section in regard to the appointment of assessors shall apply in respect of any such alternates.

(7) There shall be paid to assessors out of the accident fund the prescribed remuneration and travelling and subsistence allowances.

### **14 Functions of commissioner**

(1) Subject to the provisions of this Act the commissioner shall-

- (a) receive notices of accidents and claims for compensation;
- (b) enquire into or cause enquiry to be made into accidents;
- (c) adjudicate upon all claims and other matters coming before him for decision;
- (d) issue an order in the prescribed form for the payment of compensation in respect of any award made by him;
- (e) determine whether any person is a workman, employer, principal or contractor for the purposes of this Act;
- (f) decide any question relating to-
  - (i) the right to compensation;
  - (ii) the submission, consideration and determination of claims for compensation;
  - (iii) the computation of earnings;

- (iv) the degree of disablement of any workman;
  - (v) the amount and method of payment of any compensation;
  - (vi) the award, withholding, revision, discontinuance, suspension, increase or reduction of any compensation;
  - (g) determine whether any person is a dependant under this Act and, if so, the degree of dependency, and, where there is more than one dependant, which shall receive compensation and the allocation of compensation among them;
  - (h) consider and decide upon applications in terms of section *sixty-three*; [Para. (h) amended by s. 5 of Act 51 of 1956.]
  - (i) determine any question arising in respect of the necessity for or the character or sufficiency of any medical aid;
  - (j) determine any question relating to liability for assessment, rates of assessment, amount of assessment, method of payment of assessment and any other matter falling within his purview under Parts (B) and (C) of Chapter VII;
  - (k) determine any other question falling within his purview in connection with the application of this Act to or in respect of any employer or workman;
  - (l) administer the accident and reserve funds as provided in Chapter VII;
  - (m) ..... [Para. (m) deleted by s. 1 (1) (a) of Act 5 of 1951.]
  - (n) after the conclusion of each financial year make a report to the Minister upon the administration of this Act during that year;
  - (o) collect, and record statistics and information relating to the occurrence or cause of accidents and scheduled diseases and the grant of benefits to persons under this Act;
  - (p) make any investigation and perform such other functions as may be prescribed, or as he deems necessary for the administration of this Act.
- (2) The commissioner may-
- (a) promote, establish or subsidize, or assist in the promotion, establishment or maintenance of any body, organization or scheme whose objects consist of or include one or more of the following:
    - (i) the prevention of accidents or of any disease which is due to the nature of any occupation;
    - (ii) the promotion of the health or safety of workmen;
    - (iii) the provision of facilities designed to assist injured workmen to return to work or to reduce or remove any handicap resulting from their injuries; or
    - (iv) the carrying out of any activity conducive to the attainment of any of the objects referred to in paragraphs (i), (ii) and (iii);
  - (b) purchase or otherwise acquire shares in any body referred to in paragraph (a), and alienate any shares so acquired; and [Para. (b) substituted by s. 4 (b) of Act 11 of 1974.]
  - (c) in the prescribed manner, apply unclaimed moneys for the general welfare of workmen.

[Para. (c) added by s. 4 (c) of Act 11 of 1974 and substituted by s. 5 of Act 29 of 1984.]

[Sub-s. (2) added by s. 1 (1) (b) of Act 5 of 1951.]

**15 Power of commissioner to acquire and to alienate property and to borrow money**

Subject to the approval of the Minister of Finance, the commissioner may-

- (a) borrow money if, in his opinion, it is necessary to do so in order to meet any unforeseen contingency; or
- (b) purchase or otherwise acquire property required wholly or partly for the purposes of this Act and alienate any property so acquired. All property so acquired shall be held in the name of the commissioner in trust for the accident fund.

[S. 15 amended by s. 8 of Act 27 of 1945.]

**16 Powers in regard to witnesses and issue of subpoena**

(1) The commissioner may subpoena any person who in his opinion is able to give material information concerning the subject of any investigation under this Act or who he suspects or believes has in his possession or custody or under his control any book, document or thing which has any bearing on the investigation, to appear before him at a time and place specified in the subpoena, to be interrogated or to produce that book, document or thing. The commissioner may retain for further examination any book, document or thing so produced.

(2) A subpoena under subsection (1) shall be signed by the commissioner.

(3) The commissioner may call and administer an oath to any person present at an investigation who was or might have been subpoenaed in terms of subsection (1); and the commissioner and any assessor may interrogate him and require him to produce any relevant book, document or thing in his possession or custody or under his control.

(4) (a) If any person having been duly subpoenaed under subsection (1) fails, without sufficient cause to attend at the time and place specified in the subpoena, he shall be guilty of an offence.

(b) If any person such as is referred to in paragraph (a) or any person called in terms of subsection (3) fails to remain in attendance until excused by the commissioner from further attendance or refuses to be sworn as a witness or fails to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him, or to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so he shall be guilty of an offence: Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing, before the commissioner, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or produce any book, document or thing before a court of law, shall apply.

(5) Any witness who, after having been sworn, gives a false answer to any question put to him or makes a false statement on any matter, knowing that answer or statement to be false, shall be deemed to be guilty of perjury.

(6) The interrogation of a witness shall be conducted in public unless the commissioner otherwise decides.

(7) A person subpoenaed to appear before the commissioner may, if the commissioner is satisfied that he has by reason of such appearance suffered any pecuniary loss or been put to any expense, be paid out of the accident fund the prescribed allowances, or the amount of such loss and such expense, whichever is the less.

(8) Any person who wilfully hinders the commissioner in the exercise of any of the powers conferred upon him by this section shall be guilty of an offence.

(9) The commissioner may, in respect of any investigation which he considers it necessary to make, delegate his powers under this section to any assessor, member of his staff, officer of the public service or medical practitioner, and in this section the 'commissioner' includes any such assessor, member, officer or practitioner while acting within the scope of such delegation.

### **17 Authority to inspect and investigate**

(1) The commissioner may authorize any assessor, member of his staff, officer of the public service or medical practitioner to investigate any specified matter or all matters falling within the commissioner's purview and to report thereon, and every person so authorized shall have power to require and take affidavits or declarations as to any matter to which the investigation relates or to take any other declarations required under this Act.

(2) Every person authorized under subsection (1) (hereinafter referred to as an authorized person) shall be furnished with a certificate to that effect signed by the commissioner.

(3) For the purpose of carrying on his functions under this Act, any authorized person may-

- (a) without previous notice at any time enter any premises whatsoever and take with him on to the premises an interpreter or other assistant or any member of the police force;
- (b) while he is on the premises, or at any other time, question any person who is or has been on the premises either alone or in the presence of any other person as he thinks fit; and require from any such person the production then and there, or at a time and place fixed by the authorized person, of any book, document or thing which is or has been on the premises or in the possession or custody or under the control of any employer by whom the premises are occupied or used, or of his employee;
- (c) at any time and at any place require from any person who has the possession or custody or control of any book, document or thing relating to the business of any person who is or was an employer, the production then and there, or at a time and place fixed by the authorized person, of that book, document or thing;
- (d) examine and make extracts from and copies of any such book or document, require an explanation of any entry therein, and seize any such book, document or thing as in his opinion may afford evidence relating to any matter under this Act;
- (e) require any workman to appear before him at a specified time and place and then and there question that workman.

(4) Any authorized person exercising any power or performing any duty conferred or imposed upon him by this Act, shall on demand, produce the certificate furnished to him in terms of subsection (2).

(5) Any person who-

- (a) falsely holds himself out to be an authorized person; or
- (b) refuses or fails to answer to the best of his power any questions which an

authorized person has put to him in the exercise of his functions; or  
 (c) refuses or fails to comply to the best of his power with any lawful requirement made by an authorized person; or  
 (d) delays or hinders an authorized person in the exercise of his functions,  
 shall be guilty of an offence.

(6) The commissioner may himself exercise any powers which under this section are conferred on an authorized person: Provided that neither the commissioner nor any such person shall, without the previous permission of the President or the Speaker, exercise any of such powers within the precincts of Parliament.

### **18 Observance of secrecy**

Any person employed in connection with any enquiry under this Act who discloses, except for official purposes, or when required to do so as a witness in a court of law, any information in relation to any person, firm or business, acquired in the exercise of his powers under this Act, shall be guilty of an offence.

### **19 Advances to the accident fund from public funds**

(1) The Minister may, out of moneys appropriated by Parliament for the purpose, advance to the accident fund moneys sufficient to meet preliminary expenses incurred in connection with the administration of this Act, and such further expenditure as may be required pending payment of assessments by employers.

(2) The moneys so advanced and the interest thereon shall be a charge upon the accident fund.

### **20 Method of accounting and investment**

(1) All moneys received by the commissioner on behalf of the accident fund shall be paid into a banking account and no moneys shall be withdrawn therefrom except by means of cheques signed by the commissioner and one member of his staff, specifically authorized thereto by him, or by two such members so authorized.

(2) The commissioner may from time to time transfer to the Public Debt Commissioners for investment any portion of the moneys of the accident and reserve funds.

### **21 Expenses of the commissioner**

The remuneration of all officers appointed under section *twelve* shall be paid out of the State Revenue Fund, which shall be reimbursed from the accident fund. All other expenditure necessary and incidental to the performance of the commissioner's functions shall be paid out of the accident fund.

### **22 Accounts and audit**

(1) The commissioner shall keep books of account and other books in relation thereto for the accident fund and the reserve fund and shall prepare yearly balance sheets made up to the last day of the financial year, showing in all necessary detail the assets and liabilities and the revenue and expenditure of the funds.

[Sub-s. (1) substituted by s. 5 of Act 11 of 1974.]

(2) The accounts of the said funds shall be audited by the Auditor-General, and the expense of such audit shall be paid out of the accident fund.

[Sub-s. (2) amended by s. 7 (a) of Act 29 of 1984.]

(3) The commissioner shall, as soon as practicable after the completion of the balance sheets referred to in subsection (1), submit a copy thereof and a copy of the report referred to in paragraph (n) of section 14 to the Minister, who shall lay such copies

upon the Table in the House of Assembly within 30 days after receipt thereof by him if Parliament is then in session, or if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

[Sub-s. (3) substituted by s. 7 (b) of Act 29 of 1984.]

### **23 Income of funds exempt from tax**

The income of the accident and reserve funds, including income from any investments, shall be exempt from income tax.

### **24 Revision of compensation by commissioner**

(1) The commissioner may, after notice to the party concerned and giving him an opportunity to be heard, at any time review the compensation granted, on any of the following grounds-

- (a) that the workman has not submitted himself for examination when required to do so in terms of section *sixty*;
- (b) that the disablement which gave rise to the award is continued or aggravated by the unreasonable refusal or wilful neglect of the workman to submit himself to medical or surgical treatment;
- (c) that the workman has absented himself in such manner that no notice can be served on him;  
[Para. (c) amended by s. 6 of Act 51 of 1956.]
- (d) .....  
[Para. (d) deleted by s. 7 (a) of Act 36 of 1949.]
- (e) that any such compensation awarded in the form of a periodical payment or pension, is or has become either excessive or insufficient to meet the circumstances of the case;
- (f) that the award was based on a mistake or misrepresentation of fact, or that a different award might have been made if evidence presently available but which was not available when the commissioner made the award had been produced.

(1)*bis* The commissioner may, after notice to any party concerned, at any time review any decision, not being an award of compensation, given by him under this Act.

[Sub-s. (1)*bis* inserted by s. 7 (b) of Act 36 of 1949.]

(2) The commissioner, after making such enquiry or receiving such evidence as he deems necessary, may confirm the award or order the discontinuance, suspension, reduction or increase of any such compensation, or, in the case of any decision referred to in subsection (1)*bis*, confirm, set aside or vary that decision.

[Sub-s. (2) amended by s. 7 (c) of Act 36 of 1949.]

(3) For the purposes of this section 'compensation' shall include medical aid.

### **25 Objections and appeals against decisions of the commissioner**

(1) Any decision of the commissioner on any matter referred to in paragraphs (c), (e), (f), (g), (h), (i), (j) or (k) of section *fourteen*, or on any other matter that may be prescribed shall, subject to the provisions of this section, and of section *twenty-six*, be final.

(2) (a) Any person affected by a decision of the commissioner may, within sixty days of such decision, lodge with the commissioner in the manner prescribed an objection against such decision.

[Para. (a) amended by s. 7 of Act 51 of 1956.]

(b) An objection may similarly be lodged by any trade union or employers' organization of which the person in respect of whom such decision was given was at the relevant times a member.

(c) The commissioner, on the recommendation of the assessors referred to in subsection (3), or of a majority of them, may consider an objection similarly lodged by a trade union or employers' organization not falling within the scope of paragraph (b), if, in the opinion of the commissioner, an important principle is involved.

(3) (a) An objection lodged in terms of the foregoing provisions shall be considered and determined by the commissioner assisted by two assessors appointed or designated under section *thirteen*, to be selected by him for the purpose, of whom one shall be an assessor representing workmen and one an assessor representing employers: Provided that the commissioner may, if he deems it expedient, invite the assistance of any medical assessors appointed under subsection (4)*bis* of section *thirteen*.

[Para. (a) amended by s. 9 (a) of Act 27 of 1945 and substituted by s. 8 (a) of Act 36 of 1949.]

(b) The provisions of Part (C) of Chapter VI shall *mutatis mutandis* apply to the consideration of any such objection.

(4) After consideration of an objection, the commissioner shall, subject to the approval of not less than one half of the assessors referred to in subsection (3), (excluding any medical assessors) confirm any decision in respect of which the objection was lodged or give such other decision as in his opinion is equitable: Provided that if the commissioner and not less than one half of the assessors are unable to reach agreement, the commissioner shall submit the matter in dispute to the Minister.

[Sub-s. (4) amended by s. 9 (b) of Act 27 of 1945.]

(5) In any proceedings under this section, the commissioner may make such order as to costs and the payment thereof as he deems fit.

[Sub-s. (5) substituted by s. 8 (b) of Act 36 of 1949.]

(6) The Minister may-

(a) refer any matter submitted to him under subsection (4) back for further consideration by the commissioner, assisted by the assessors referred to in subsection (3) with or without additional assessors specified by the Minister, and the provisions of this section shall *mutatis mutandis* apply to any such reconsideration; or

(b) after such enquiry as he deems necessary, determine such matter.

(7) (a) Any decision given by the commissioner in accordance with the provisions of subsection (4), or by the Minister under subsection (6) shall be final and not subject to review or appeal in any court of law on any grounds whatsoever, save review or appeal as provided in this subsection.

(b) Any person affected by a decision referred to in paragraph (a) may appeal to the provincial or local division of the Supreme Court having jurisdiction on any question as to-

- (i) the interpretation of this Act or any other law;
- (ii) whether an accident causing the disablement or death of a workman was attributable to his own serious and wilful misconduct;
- (iii) whether the amount of any compensation awarded is so excessive or so inadequate that the award could not reasonably be made; or

(iv) the right to additional compensation in terms of section *forty-three*.

(c) Subject to the provisions of this subsection, such appeal shall be noted and prosecuted as if it were an appeal from a judgment of a magistrate's court in a civil matter and all rules applicable to such last-mentioned appeal shall *mutatis mutandis* apply to an appeal under this subsection.

(d) Any decision referred to in paragraph (a) may be reviewed by any provincial or local division of the Supreme Court having jurisdiction, on the petition of any person affected by such decision, if it appears to the court that the commissioner and assessors or the Minister in giving their decision exceeded their powers, or refused to exercise powers which they were bound to exercise, or exercised their powers in an arbitrary or *mala fide* or grossly unreasonable manner. Such petition for review shall be lodged within twenty-one days of such decision.

[Para. (d) amended by s. 9 (c) of Act 27 of 1945.]

(8) Except where the commissioner otherwise orders, no obligation to pay any assessment, compensation or other amount to the commissioner or the accident fund, or any periodical payments to or in respect of a workman in terms of a decision of the commissioner shall be suspended or deferred by reason of the fact that an objection has been lodged against such decision under subsection (2), or that an appeal has been lodged or application has been made for review under subsection (7). But if as a result of any such objection or review, the amount payable in terms of the original decision is varied, the person who made the payment shall be entitled to a refund or liable to pay the additional amount, as the case may be.

[Sub-s. (8) amended by s. 9 (d) of Act 27 of 1945.]

## **26 Commissioner may state a case for Supreme Court**

(1) The commissioner may of his own motion or at the request of an interested party to any proceedings under this Act, state a special case on any question of law in connection with any matter arising in such proceedings, for the decision of the provincial or local division of the Supreme Court having jurisdiction in the area in which the proceedings are held. Every interested party shall have the right to appear in person or by counsel at the hearing of such special case.

(2) In any case so stated the commissioner shall set forth-

- (a) the facts which were established; and
- (b) the view of the law which he has adopted in relation to those facts.

(3) Whenever the commissioner has any doubt as to the correctness of any decision given by any provincial or local division of the Supreme Court on any question of law in connection with this Act, he may submit that decision to the Appellate Division of the Supreme Court and cause the matter to be argued before it, in order that it may determine the said question for the future guidance of all courts.

## **CHAPTER III**

### **RIGHT TO COMPENSATION (ss 27-36)**

## **27 Right of workman to compensation**

(1) If an accident happens to a workman resulting in his disablement or death, the workman shall be entitled to the benefits under this Act: Provided that-

- (a) no periodical payments shall be made in respect of the first three days of disablement which lasts for less than two weeks;
- (b) if the accident is attributable to the serious and wilful misconduct of the

workman, no compensation shall be payable under this Act, unless the accident results in serious disablement, or the workman dies in consequence thereof leaving a dependant wholly dependent upon him, and the commissioner or, if authorized thereto by the commissioner, the employer individually liable, may further refuse to pay the cost of medical aid, or such portion thereof as the commissioner may determine;

- (c) if any monthly pension payable in terms of this Act on or at any time after the date of commencement of the Workmen's Compensation Amendment Act, 1979, ceases in the course of any month, such pension shall be deemed to have ceased on the last day of such month.

[Para. (c) added by s. 1 of Act 8 of 1979.]

[Sub-s. (1) amended by s. 10 (a) and (b) of Act 27 of 1945 and substituted by s. 9 (a) of Act 36 of 1949.]

(1)*bis* .....

[Sub-s. (1)*bis* inserted by s. 10 (c) of Act 27 of 1945 and deleted by s. 9 (b) of Act 36 of 1949.]

(2) For the purposes of this Act, an accident resulting in the serious disablement or death of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman at the time when the accident happened was acting in contravention of any law applicable to his employment, or of any instructions issued by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of, and in connection with, his employer's business.

(3) For the purposes of this Act the conveyance of a workman free of charge to or from his place of work by means of transport controlled and specially provided by his employer for the purpose of such conveyance, shall be deemed to take place in the course of such workman's employment.

[Sub-s. (3) added by s. 8 of Act 51 of 1956.]

## **28 Accidents during training for or performance of emergency services**

When a workman meets with an accident-

- (a) while, with the consent of his employer, being trained in organized first aid, ambulance or rescue work, fire-fighting or other emergency service, or engaged in any competition in connection therewith; or
- (b) in or about his employer's mine, works or premises, while engaged in any organized first aid, ambulance or rescue work, fire-fighting or other emergency service; or
- (c) while engaged, with the consent of his employer, in any organized first aid, ambulance or rescue work, fire-fighting or other emergency service on any mine, works or premises, other than his employer's,

resulting in his disablement or death, such accident shall, for the purpose of this Act, be deemed to arise out of and in the course of his employment.

[S. 28 amended by s. 11 of Act 27 of 1945 and substituted by s. 2 of Act 24 of 1981.]

## **29 .....**

[S. 29 amended by s. 12 of Act 27 of 1945, substituted by s. 9 of Act 51 of 1956, amended by s. 3 of Act 7 of 1961 and repealed by s. 1 (1) of Act 98 of 1969.]

## **30 Compensation of workman entitled to pension to which employer contributes**

If a workman (other than a workman in the employ of the Government as defined in section 1 of the Government Service Pensions Act, 1965 (Act 62 of 1965)), who is entitled to compensation under this Act in respect of an accident, has received or will receive as compensation in respect of the same accident any pension or gratuity payable by the employer, or from a pension, superannuation or provident fund to which the employer has contributed, the commissioner may in his discretion, in determining the amount of the compensation to be awarded, have regard to any amount paid by the employer by way of such pension or gratuity or towards such fund in respect of such workman, and where the compensation is payable out of the accident fund the commissioner may reduce the assessment payable by the employer.

[S. 30 substituted by s. 2 of Act 98 of 1969.]

### **31 Compensation of workman who has previously received compensation or other benefits**

(1) Save as is provided in section 30, the commissioner may in his discretion, in awarding or revising the award of compensation in respect of permanent disablement or death-

(a) make allowance for-

(i) in the case of a workman himself, any compensation and any benefit granted to him under this Act or any other law or by an employer individually liable or a mutual association otherwise than in terms of any law on account of permanent disablement;

[Sub-para. (i) amended by s. 13 (a) of Act 27 of 1945 and by s. 10 of Act 36 of 1949.]

(ii) in the case of dependants any benefits granted to them under any law on account of the injury, death or ill-health of any physical disablement of the workman and any lump sum awarded to the workman in terms of section 45 or 49;

[Sub-para. (ii) substituted by s. 4 of Act 28 of 1977.]

(iii) in case of both a workman and his dependants any benefits which the workman or his dependants may have received from the employer in respect of the accident; and

(b) where compensation is payable out of the accident fund order that the whole or any portion of the value of any such benefit as is referred to in subparagraph (iii) of paragraph (a) of subsection (1) be refunded to the employer.

[Sub-s. (1) amended by s. 3 of Act 98 of 1969.]

(1)*bis* Whenever a workman has received compensation for permanent disablement under this Act and subsequently meets with an accident resulting in further permanent disablement in respect of which compensation is payable under this Act, the commissioner may, if the workman shows, to the satisfaction of the commissioner, that it would be to his advantage to do so, calculate his compensation in respect of the further permanent disablement on the earnings which he was receiving when he met with any previous accident in respect of which compensation was paid.

[Sub-s. (1)*bis* inserted by s. 13 (b) of Act 27 of 1945.]

(2) Save as is provided in section *forty-three* a workman shall not receive compensation in the form of a pension or pensions, in respect of one or more accidents, exceeding in the aggregate the pension payable in respect of one hundred per cent

permanent disablement: Provided that, in determining such compensation, the calculation shall be based upon the earnings most favourable to the workman at the time of any such accident.

### **32 Contracting out prohibited**

(1) Any provision in a contract existing at the commencement of this Act or thereafter entered into, whereby a workman relinquishes any right to benefits under this Act, shall be null and void.

[Sub-s. (1) amended by s. 10 (a) of Act 51 of 1956 and by s. 10 of Act 29 of 1984.]

(2) .....

[Sub-s. (2) amended by s. 14 of Act 27 of 1945 and deleted by s. 10 (b) of Act 51 of 1956.]

### **33 Deduction from earnings prohibited**

(1) Any employer who deducts from the earnings of any of his workmen any part of any sum which the employer is or may become liable to pay as compensation under this Act, or who requires or permits any of his workmen to contribute towards the cost of any liability which he has incurred or may incur under this Act, shall be guilty of an offence.

(2) Any court convicting an employer under subsection (1) shall in addition to imposing any lawful criminal penalty upon him, order that, within a fixed period and in instalments or otherwise, as determined by the court, he pay to an officer of the public service specified by the court any amount in respect of which he has been convicted.

(3) Such officer shall pay any amount received by him in pursuance of any such order to the workman in respect of whom the offence occurred.

(4) Upon the application of the person convicted, the court may at any time, for good cause shown, extend the period within which any such amount must be paid or vary the amounts of the instalments.

(5) An order made under this section shall have the legal effect of, and may be executed as if it were a civil judgment in favour of the Government of the Republic.

[Sub-s. (5) amended by s. 11 of Act 51 of 1956 and by Proclamation 45 of 1990.]

### **34 Benefits payable to assessors**

(1) If an assessor (not being a person in the service of an employer referred to in subparagraph (i) of paragraph (a) of subsection (1) of section *seventy*) appointed under section *thirteen* sustains a personal injury as a result of an accident arising out of and in the course of the performance by him of any of his functions as an assessor, he or any other person who would have been a workman in terms of paragraph (c) of subsection (1) of section *three* if such assessor were a workman, shall be entitled to such benefits as may be prescribed.

[Sub-s. (1) amended by s. 3 of Act 21 of 1964.]

(2) Benefits in terms of this section shall be paid by the commissioner from the accident fund and shall be deemed to be expenses incurred by the commissioner in the administration of this Act.

[S. 34 repealed by s. 11 of Act 36 of 1949 and inserted by s. 12 of Act 51 of 1956.]

### **35 Special circumstances in which commissioner may refuse award**

Where under this Act there exists any right to compensation in respect of the death or disablement of any workman as a result of an accident the commissioner may in his discretion refuse to award the whole or a portion of such compensation and the

commissioner, or, if authorized thereto by the commissioner, the employer individually liable, may further refuse to pay the whole or any portion of the cost of medical aid-

- (a) if such workman has at any time represented to the employer or the commissioner that he was not suffering or had not previously suffered from a serious injury or a scheduled disease or a serious illness knowing that the representation was false and the accident has been caused by or the death has resulted from or the disablement has resulted from or been aggravated by such injury, disease or illness; or  
[Para. (a) amended by s. 12 of Act 36 of 1949.]
- (b) if, in the opinion of the commissioner, the death was caused or the disablement was caused, continued or aggravated by an unreasonable refusal or wilful neglect of the workman to submit to medical or surgical treatment in respect of any injury, disease or illness, whether caused by the accident or sustained or contracted before the accident.

[Para. (b) amended by s. 15 (b) of Act 27 of 1945.]

[S. 35 amended by s. 15 (a) of Act 27 of 1945.]

### **36 When right to periodical payments ceases**

The right to periodical payments shall *ipso facto* cease-

- (a) upon termination of temporary disablement, or when the workman resumes the work upon which he was employed at the time of the accident, or resumes any work at the same or greater earnings; or  
[Para. (a) amended by s. 16 (a) of Act 27 of 1945.]
- (b) when the workman is awarded compensation for permanent disablement:  
[Para. (b) amended by s. 16 (b) of Act 27 of 1945.]

Provided that the commissioner may revive the right to periodical payments if-

- (i) the workman suffers further disablement as a result of the same accident; or
- (ii) the workman undergoes further medical, surgical or remedial treatment necessitating further absence from work if, in the opinion of the commissioner, the treatment will reduce the disability from which the workman suffers,

and any pension payable to the workman shall be suspended while the workman is in receipt of periodical payments in terms of this proviso.

[S. 36 amended by s. 16 (c) of Act 27 of 1945.]

## **CHAPTER IV**

### **LIABILITY FOR COMPENSATION (s 37)**

#### **37 Liability for compensation**

Compensation shall be paid to any workman entitled thereto either-

- (a) by the employer individually liable; or
- (b) by the commissioner from the accident fund.

[S. 37 amended by s. 17 of Act 27 of 1945 and by s. 13 of Act 36 of 1949 and substituted by s. 11 of Act 29 of 1984.]

## **CHAPTER V**

### **AMOUNT AND METHOD OF COMPENSATION (ss 38-49)**

#### **38 Amount of compensation for temporary partial or total disablement**

- (1) (a) Compensation for temporary total disablement shall be periodical

payments during such temporary disablement at a rate of seventy-five per cent of the monthly earnings of the workman or, as from a date fixed by the Minister by notice in the *Gazette*, such higher percentage of such earnings determined by the Minister in such notice, up to R1 500 of such earnings or, as from a date so fixed, such higher amount<sup>iii\*</sup> of such earnings so determined: Provided that the periodical payment shall not be less than R13 per month or, as from a date so fixed, such higher amount as may be so determined or the rate of the workman's earnings at the time of the accident, whichever is the lesser.

[Para. (a) amended by s. 14 (a) and (b) of Act 36 of 1949, by s. 13 (a) of Act 51 of 1956 and by s. 4 (a) of Act 7 of 1961, substituted by s. 2 (a) of Act 58 of 1967 and by s. 1 (a) of Act 60 of 1971, amended by s. 6 (a) of Act 11 of 1974 and by s. 5 (a) of Act 28 of 1977 and substituted by s. 3 (a) of Act 24 of 1981, by s. 12 (a) of Act 29 of 1984 and by s. 2 (a) of Act 35 of 1987.]

(b) Such periodical payments shall be made during the period of temporary total disablement, but not exceeding a period of twelve months: Provided that, if such disablement continues after the expiration of the said period of twelve months, the commissioner may, in his discretion, direct the continuation of such payments for such further period or periods as he may from time to time determine.

[Para. (b) amended by s. 18 (a) of Act 27 of 1945.]

(c) .....

[Para. (c) deleted by s. 18 (b) of Act 27 of 1945.]

(2) .....

[Sub-s. (2) deleted by s. 18 (c) of Act 27 of 1945.]

(3) Periodical payments shall be made at such times and at such intervals (but not at intervals of longer than one month) as the commissioner may determine.

(4) In determining the amount of any periodical payments, any excess of any monthly earnings of a workman above R1 500 or, if the Minister has in terms of subsection (1) determined a higher amount<sup>iv\*</sup> of such earnings, any excess of such higher amount shall not be taken into consideration.

[Sub-s. (4) amended by s. 14 (c) of Act 36 of 1949, by s. 13 (b) of Act 51 of 1956 and by s. 4 (b) of Act 7 of 1961, substituted by s. 2 (b) of Act 58 of 1967 and by s. 1 (b) of Act 60 of 1971, amended by s. 6 (b) of Act 11 of 1974, by s. 5 (b) of Act 28 of 1977, by s. 3 (b) of Act 24 of 1981 and by s. 12 (b) of Act 29 of 1984 and substituted by s. 2 (b) of Act 35 of 1987.]

(5) The compensation in case of temporary partial disablement shall be such portion of the periodical payments referred to in subsection (1) as the commissioner may deem equitable.

[Sub-s. (5) substituted by s. 5 (c) of Act 28 of 1977.]

(6) Periodical payments shall not be payable in respect of any period during which the employer, in terms of any law relating to merchant shipping, pays the expenses of maintaining an injured seaman: Provided that notwithstanding such payment, the commissioner may, in his discretion, direct that such periodical payments, not exceeding those referred to in subsection (1), as he may deem equitable be paid.

(7) Temporary total disablement lasting for more than eighteen months may, in the discretion of the commissioner, be presumed to be permanent.

### **39 Amount of compensation for permanent disablement**

(1) Compensation for permanent disablement shall be fixed according to the degree of disablement and in accordance with the following rules-

- (a) Where the degree of disablement is thirty per cent, a lump sum equal to 15 times the monthly earnings of the workman or, as from a date fixed by the Minister by notice in the *Gazette*, a lump sum equal to as many times the monthly earnings of the workman as the Minister may determine in such notice, up to R840 of such earnings or, from a date so fixed, up to such higher amount<sup>v\*</sup> of such earnings so determined.

[Para. (a) amended by s. 15 (a) of Act 36 of 1949 and by s. 14 (a) of Act 51 of 1956, substituted by s. 5 (a) of Act 7 of 1961, by s. 3 (a) of Act 58 of 1967 and by s. 2 (a) of Act 60 of 1971, amended by s. 7 (a) of Act 11 of 1974 and by s. 6 (a) of Act 28 of 1977 and substituted by s. 4 (a) of Act 24 of 1981, by s. 13 (a) of Act 29 of 1984 and by s. 3 (a) of Act 35 of 1987.]

- (b) Where the degree of disablement is under thirty per cent, a lump sum bearing the same proportion to a lump sum calculated in accordance with paragraph (a) as the degree of disablement bears to thirty per cent.

[Para. (b) amended by s. 5 (b) of Act 7 of 1961.]

- (c) Where the degree of disablement is one hundred per cent, a monthly pension equal to seventy-five per cent of the monthly earnings of the workman or, as from a date fixed by the Minister by notice in the *Gazette*, such higher percentage of the monthly earnings as the Minister may determine in such notice, up to R1 500 of such earnings or, as from a date so fixed, such higher amount<sup>vi\*</sup> of such earnings so determined: Provided that the pension payable shall not be less than R13 per month or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount per month as the Minister may determine in such notice or the rate of the workman's earnings at the time of the accident, whichever is the lesser.

[Para. (c) amended by s. 19 (a) and (b) of Act 27 of 1945, by s. 15 of Act 36 of 1949, by s. 14 (b) of Act 51 of 1956 and by s. 5 (c) of Act 7 of 1961, substituted by s. 3 (b) of Act 58 of 1967 and by s. 2 (b) of Act 60 of 1971, amended by s. 7 (a) of Act 11 of 1974 and by s. 6 (a) of Act 28 of 1977 and substituted by s. 4 (b) of Act 24 of 1981, by s. 13 (b) of Act 29 of 1984 and by s. 3 (b) of Act 35 of 1987.]

- (d) Where the degree of disablement is under one hundred per cent, but more than thirty per cent, a monthly pension<sup>vii\*</sup> bearing the same proportion to a pension calculated in accordance with paragraph (c) as the degree of disablement bears to one hundred per cent.

[Para. (d) amended by s. 5 (d) of Act 7 of 1961.]

(2) In determining the compensation under subsection (1) any excess of the monthly earnings of a workman above R1 500 or, as from a date fixed by the Minister by notice in the *Gazette*, above such higher amount<sup>viii\*</sup> as the Minister may determine in such notice, shall not be taken into consideration.

[Sub-s. (2) amended by s. 15 (a) of Act 36 of 1949, by s. 14 (c) of Act 51 of 1956 and by s. 5 (e) of Act 7 of 1961, substituted by s. 3 (c) of Act 58 of 1967 and by s. 2 (c) of Act 60 of 1971, amended by s. 7 (b) of Act 11 of 1974, by s. 6 (b) of Act 28 of 1977, by s. 4 (c) of Act 24 of 1981 and by s. 13 (c) of Act 29 of 1984 and substituted by s. 3 (c) of Act 35 of 1987.]

(3) Where a workman has sustained an injury specified in the First Schedule to the Act, he shall be regarded, for the purposes of this Act, as being permanently disabled to the extent set out in the second column of the said Schedule: Provided that where the injury is not specified in such Schedule, the commissioner shall adopt a percentage of disablement which, in his opinion, is not inconsistent with the provisions of the Schedule: Provided further, that where the injury has unusually serious consequences, having regard to the special nature of the workman's occupation, and the commissioner considers that the percentage of disablement which he would otherwise have adopted is clearly inadequate, he may adopt such higher percentage as he deems equitable.

(4) From any compensation awarded under this section, no deduction shall be made on account of any periodical payments in respect of temporary disablement under section *thirty-eight*.

(5) In this section 'monthly pension' means a pension payable monthly during the lifetime of the workman.

(6) (a) After carrying out such investigation as he deems necessary the commissioner may recommend to the Minister that the First Schedule to the Act be amended in accordance with the provisions of this subsection.

(b) The Minister may, by notice in the *Gazette*, amend the said Schedule in accordance with any such recommendation: Provided that not less than one month before the publication of this notice there has been published in the *Gazette* a notice-

- (i) of the intention to publish the first-mentioned notice and of its proposed contents; and
- (ii) inviting any person who objects to the publication of the first-mentioned notice to lodge an objection thereto in writing with the commissioner.

[Para. (b) substituted by s. 2 of Act 51 of 1991.]

(c) Any notice which amends the First Schedule to this Act may include amendments whereby the percentage of disablement for any injury or class of injury differs in respect of specified occupations or classes of occupations, or according to specified circumstances.

[Para. (c) substituted by s. 2 of Act 51 of 1991.]

[Sub-s. (6) added by s. 19 (c) of Act 27 of 1945.]

#### **40 Amount of compensation where workman dies**

(1) Where the workman dies from an injury caused by accident, compensation shall be as follows:

- (a) If the workman leaves as a dependant a widow or invalid widower and no children, a lump sum not exceeding twice the workman's monthly earnings or R840, whichever is the lesser, or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount<sup>ix\*</sup> as the Minister may determine in such notice, but not exceeding twice the workman's monthly earnings, whichever is the lesser, and a monthly pension equal to forty per cent of the pension which would have been granted to the workman if totally and permanently disabled, under section 39 (1) (c).

[Para. (a) amended by s. 20 (a) of Act 27 of 1945, by s. 16 (a) of Act 36 of 1949, by s. 15 (a) of Act 51 of 1956 and by s. 6 (a) of Act 7 of 1961 and substituted by s. 4 (a) of Act 58 of 1967, by s. 14 (a) of Act 29 of 1984 and by s. 4 (a) of Act 35 of 1987.]

- (b) If the workman leaves as dependants, a widow or invalid widower and one

or more children, compensation<sup>x\*</sup> to the widow or invalid widower calculated in terms of paragraph (a) and in respect of the children compensation calculated in terms of paragraph (c): Provided that the pensions payable under this paragraph shall not in all exceed the pension which would have been awarded to the workman, if totally and permanently disabled, under paragraph (c) of subsection (1) of section *thirty-nine*, and any reduction under this proviso shall be allocated in such manner as the commissioner may from time to time determine.

[Para. (b) amended by s. 16 (b) of Act 36 of 1949.]

(c) If the workman leaves as dependants one or more children, a monthly pension<sup>xi\*</sup> in respect of each child equal to twenty per cent, of the pension which would have been awarded to the workman, if totally and permanently disabled, under paragraph (c) of subsection (1) of section *thirty-nine*: Provided that-

(i) the pension payable in respect of a child shall cease when the child attains the age of eighteen years, or dies or marries before reaching that age;

[Para. (i) amended by s. 15 (b) of Act 51 of 1956 and substituted by s. 8 of Act 11 of 1974.]

(ii) the commissioner may, in his discretion, direct that the pension awarded in respect of a child shall continue after he attains the age of eighteen years, or that a similar pension be awarded in respect of any son or daughter not being a child as in this Act defined, if he or she is, in the opinion of the commissioner, unable by reason of mental or physical disability to earn an income, for so long as it might reasonably have been expected that the deceased workman would have continued to contribute towards his or her support;

[Para. (ii) amended by s. 15 (b) of Act 51 of 1956 and substituted by s. 8 of Act 11 of 1974.]

(iii) where a workman does not leave as a dependant a widow or an invalid widower, the aggregate amount of the pensions payable in terms of this paragraph may, in the discretion of the commissioner, and subject to revision by him from time to time, be increased by an amount not exceeding the pension which would have been payable to a widow or invalid widower under paragraph (a);

(iv) where in the circumstances referred to in subparagraph (iii) of this proviso, the total maximum amount payable in respect of the pensions awarded, including any increase under that subparagraph, but disregarding the provisions of subparagraph (ii) of this proviso, will in the opinion of the commissioner, be less than two years' earnings of the workman or two thousand five hundred rand, whichever is the less, he may in his discretion, and subject to revision by him from time to time, increase such pensions, but so that the total maximum amount payable does not exceed two years' earnings of the workman or two thousand five hundred rand, whichever is the less;

[Para. (iv) amended by s. 15 (c) of Act 51 of 1956, by s. 6 (b) of Act 7 of 1961 and by s. 7 (a) of Act 28 of 1977.]

- (v) the pensions payable under this paragraph shall not in all exceed the pension which would have been awarded to the workman, if totally and permanently disabled, under paragraph (c) of subsection (1) of section *thirty-nine*;
- (vi) any increase or reduction in pensions<sup>xii\*</sup> made in terms of this proviso shall be allocated in such manner as the commissioner may deem equitable, and the amount thereof and the method of allocation may be revised by him from time to time;

[Para. (c) amended by s. 20 (b) of Act 27 of 1945 and substituted by s. 16 (c) of Act 36 of 1949.]

- (d) If the workman leaves no dependants of any class referred to in paragraph (a), (b) or (c), such monthly pension<sup>xiii\*</sup> to any dependants wholly dependent upon the workman as the commissioner may, in his discretion, award, and for so long as it might reasonably have been expected that the deceased workman would have continued to contribute towards their support, but not exceeding in the aggregate forty per cent of the pension which would have been awarded to the workman under paragraph (c) of subsection (1) of section *thirty-nine*, if totally and permanently disabled.

[Para. (d) amended by s. 16 (d) of Act 36 of 1949.]

- (e) If the workman leaves no dependant of any class referred to in paragraph (a), (b), (c) or (d), to the dependants partly dependent upon the workman, at the discretion of the commissioner, a lump sum not exceeding a sum which bears the same proportion to two years' earnings or two thousand five hundred rand, whichever is the less, as the degree of dependency bears to total dependency.

[Para. (e) amended by s. 15 (d) of Act 51 of 1956, by s. 6 (c) of Act 7 of 1961 and by s. 7 (b) of Act 28 of 1977.]

(2) The commissioner may in his discretion pay out of the accident fund, or, as the case may be, direct the employer individually liable to pay, an allowance not exceeding R900 or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount<sup>xiv\*</sup> as the Minister may determine in such notice towards the necessary burial expenses of the workman.

[Sub-s. (2) amended by s. 16 (e) of Act 36 of 1949, by s. 15 (e) of Act 51 of 1956 and by s. 6 (d) of Act 7 of 1961, substituted by s. 4 (b) of Act 58 of 1967, amended by s. 7 (c) of Act 28 of 1977 and substituted by s. 5 of Act 24 of 1981, by s. 14 (b) of Act 29 of 1984 and by s. 4 (b) of Act 35 of 1987.]

(3) Save as provided in section *thirty-one*, no deduction shall be made from the compensation awarded under this section to a dependant, in respect of any compensation awarded to the workman himself for the same accident.

(4) (a) The pension payable to a widow or invalid widower under this section shall cease if she or he dies.

[Para. (a) substituted by s. 7 (d) of Act 28 of 1977.]

(b) The provisions of subparagraphs (iii), (iv), (v) and (vi) of the proviso to paragraph (c) of subsection (1) shall *mutatis mutandis* apply in the case of the death of a

widow or invalid widower.

(c) .....

[Para. (c) substituted by s. 4 (c) of Act 58 of 1967 and deleted by s. 7 (e) of Act 28 of 1977.]

[Sub-s. (4) substituted by s. 20 (c) of Act 27 of 1945 and by s. 16 (f) of Act 36 of 1949.]

(5) In this section 'widow' includes a woman referred to in paragraph (b) of subsection (1) of section *four*.

(6) If the workman leaves two or more dependants of the classes referred to in paragraphs (a), (b) or (c) of subsection (1), and the total monthly pensions payable to them in terms of this section do not at least equal the rate of the workman's earnings, or thirteen rand per month, whichever is the less, the commissioner may, notwithstanding the proviso to paragraph (b) of subsection (1), increase the pensions to the said amount when in his opinion the said dependants would be unable to maintain themselves on the pensions otherwise payable. The increase shall be allocated in such manner as the commissioner may deem equitable, and the amount thereof and the method of allocation may be revised by him from time to time.

[Sub-s. (6) added by s. 20 (d) of Act 27 of 1945 and amended by s. 6 (e) of Act 7 of 1961.]

#### **41 Method of calculating earnings**

(1) For the purpose of determining the compensation payable, the commissioner shall compute the earnings of the workman in such manner as, in his opinion, is best calculated to give the monthly rate at which the workman was being remunerated by his employer at the time of the accident including-

- (a) the value of any food or quarters supplied by the employer save for the purpose of determining the amount of any periodical payment payable in respect of any period of temporary disablement during which the workman receives both food and quarters to the satisfaction of the commissioner from his employer, or as part of the medical aid to which he is entitled;
- [Para. (a) amended by s. 21 (a) of Act 27 of 1945.]

- (b) any overtime payments or other special remuneration of a constant character or for work habitually performed,

but excluding remuneration for intermittent overtime and casual payments of a nonrecurrent nature, sums paid by an employer to a workman to cover any special expense entailed on the workman by the nature of the work, or any *ex gratia* payment to the workman, whether given by the employer or any other person.

(2) Where the workman's remuneration is fixed at a rate calculated upon work performed, his earnings shall be taken to be his remuneration for similar work upon the same terms of remuneration for as long a period as possible prior to the accident but not exceeding twelve months. Where by reason of the shortness of time during which the workman has been in the employment of the employer it is impracticable to compute his earnings in such employment, the earnings shall be computed if possible upon the basis of the amount which the workman earned at similar work at the same terms of remuneration with another employer during the twelve months immediately preceding the accident, or upon the basis of the amount which during the twelve months immediately preceding the accident has been earned by other workman with the first-mentioned employer at similar employment on the same terms of remuneration, or would have been

earned by the workman during such preceding twelve months had he been so employed.

(3) Where the workman has entered into concurrent contracts of service with two or more employers, and has worked under those contracts at one time for one employer and at another time for another employer, his earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

(3)*bis* .....

[Sub-s. (3)*bis* inserted by s. 21 (b) of Act 27 of 1945, amended by s. 4 of Act 21 of 1964 and deleted by s. 15 of Act 29 of 1984.]

(3)*ter* In any case where in the opinion of the commissioner it is not practicable to compute the workmen's earnings in accordance with the preceding provisions, the commissioner may determine such earnings in such other manner as he deems equitable, but with due regard to the principles laid down in those provisions.

[Sub-s. (3)*ter* inserted by s. 17 of Act 36 of 1949.]

(4) Nothing in this section shall prevent the computation of earnings on a weekly basis. Where the earnings are so computed the monthly earnings shall be calculated as equal to four and one-third times the amount of such weekly earnings.

#### **42 Compensation for permanent disablement where workman is under twenty-six**

Where a workman who has suffered permanent disablement was at the date of the accident under twenty-six years of age, or was employed under a contract of apprenticeship, improvership, or learnership, the amount of his compensation shall be based on the earnings which had he not met with the accident he would in the opinion of the commissioner, probably have been receiving upon the twenty-sixth anniversary of his birthday or at the end of five years after the accident, or upon completion of his apprenticeship, improvership, or learnership, whichever calculation is more favourable to the workman

[S. 42 amended by s. 18 of Act 36 of 1949.]

#### **43 Compensation may be increased when accident due to employer's negligence**

(1) Notwithstanding anything to the contrary in this Act contained, if a workman meets with an accident which is due:

- (a) to the negligence-
  - (i) of his employer; or
  - (ii) of a person entrusted by such employer with the management, or in charge of the business or any branch or department thereof; or
  - (iii) of a person having the right to engage or discharge workmen on behalf of the employer; or
  - (iv) of a certificated engineer appointed to be in general charge of machinery, or a person appointed to assist such certificated engineer in terms of any regulation made under the Mines and Works Act, 1956 (Act 27 of 1956); or

[Sub-para. (iv) inserted by s. 22 (a) of Act 27 of 1945, amended by s. 16 (a) of Act 51 of 1956, substituted by s. 16 (a) of Act 29 of 1984 and amended by Proclamation 45 of 1990.]

- (v) of a person appointed to be in charge of machinery in terms of any regulations made under the Machinery and Occupational Safety Act,

1983 (Act 6 of 1983); or

[Sub-para. (v) inserted by s. 22 (a) of Act 27 of 1945, amended by s. 16 (b) of Act 51 of 1956, substituted by s. 16 (b) of Act 29 of 1984 and amended by Proclamation 45 of 1990.]

(b) to a patent defect in the condition of the premises, works, plant, material or machinery used in such business, which defect the employer or any such person has knowingly or negligently caused or failed to remedy,

[Para. (b) amended by s. 19 (a) of Act 36 of 1949.]

the workman may apply to the commissioner for increased compensation in addition to the compensation ordinarily payable under this Act.

[Sub-s. (1) amended by s. 22 (b) of Act 27 of 1945 and by s. 19 (b) of Act 36 of 1949.]

(2) (a) An application for increased compensation under this section shall be lodged with the commissioner in the prescribed manner within a period of six months of the date of the accident and shall contain the prescribed particulars: Provided that the commissioner may extend the said period by a further period not exceeding eighteen months if he is satisfied that the workman had good reason for not making the application within the said period, and that neither the accident fund nor the employer will be seriously prejudiced by the extension of the said period.

[Para. (a) amended by s. 2 of Act 8 of 1979.]

(b) As soon as practicable after receipt of such an application, the commissioner shall transmit a copy thereof to the person who employed the workman at the time of the accident.

(c) Subject to any rules which the commissioner may prescribe for the purpose of facilitating the consideration of applications under this section, the provisions of Part (C) of Chapter VI shall *mutatis mutandis* apply in respect of any such application.

[Sub-s. (2) substituted by s. 19 (c) of Act 36 of 1949.]

(3) If the commissioner is satisfied that the accident was due to any such negligence or defect as is referred to in subsection (1), he shall award the applicant such additional compensation as he deems equitable: Provided that the amount of such additional compensation, together with any other compensation awarded under this Act, shall not exceed the amount of the pecuniary loss which, in the opinion of the commissioner, the applicant has suffered or may reasonably be expected to suffer as a direct result of the said accident.

[Sub-s. (3) amended by s. 19 (d) of Act 36 of 1949.]

(3)*bis* An application under subsection (1) may in the discretion of the commissioner be dealt with *mutatis mutandis* in accordance with the procedure prescribed in subsections (3) (a), (4) and (6) of section *twenty-five*, as if it were an objection referred to in subsection (2) of that section.

[Sub-s. (3)*bis* inserted by s. 19 (e) of Act 36 of 1949.]

(4) In any proceedings under this section, the commissioner may make such order as to costs and the payment thereof as he deems fit.

(5) If increased compensation has been awarded under the preceding provisions of this section, the commissioner may, in his discretion during such period as he thinks fit, apply the provisions of subsection (4) of section *seventy-one* against the employer of the workman in question.

(6) The provisions of this section may *mutatis mutandis* be applied by the

commissioner at any time before the expiration of a period of twelve months after the date on which the accident has been reported to the commissioner by the employer, in any case where, notwithstanding the fact that no application has been made under subsection (1), the commissioner considers that there is *prima facie* proof that the workman is entitled to additional compensation in terms of this section.

[Sub-s. (6) added by s. 22 (c) of Act 27 of 1945 and substituted by s. 5 of Act 9 of 1970.]

#### **43bis Increase of monthly pensions**

(1) The Minister may by notice in the *Gazette* increase the monthly pensions payable in terms of section 39 or 40 by such percentage<sup>xv\*</sup> as he may so determine.

(2) In determining the percentage contemplated in subsection (1) the Minister may differentiate between accidents which happened on different dates.

[S. 43bis inserted by s. 17 of Act 51 of 1956, amended by s. 6 of Act 9 of 1970, by s. 9 of Act 11 of 1974, by s. 3 of Act 8 of 1979, by s. 6 of Act 24 of 1981, by s. 17 of Act 29 of 1984 and by s. 5 of Act 35 of 1987 and substituted by s. 1 of Act 40 of 1990.]

#### **44 Where workman requires constant attendance**

Where the injury in respect of which compensation is payable causes disablement of such a nature that the workman is unable to perform the essential actions of life, without the constant help of another person, the commissioner may in his discretion in addition to any other benefits under this Act grant an allowance towards the cost of such help as may be required from time to time.

#### **45 Pensioner resident outside the Republic**

If a workman who is entitled to a pension under this Act resides outside the Republic or is absent from the Republic for a period or periods totalling more than six months, the commissioner may, after due notice to the workman and after having considered any representations made by the workman within a period fixed by the commissioner, award such workman a lump sum in lieu of such pension, and after payment of such lump sum the pension shall cease: Provided that such lump sum, together with any compensation paid in accordance with the provisions of section *thirty-nine* and any lump sum paid in lieu of a portion of a pension in terms of section *forty-nine* or together with any compensation paid in accordance with the provisions of section *forty*, as the case may be, shall be not less than two thousand rand or the capitalized value of the pension, as determined by the commissioner, whichever is the less.

[S. 45 substituted by s. 20 of Act 36 of 1949 and amended by s. 18 of Act 51 of 1956 and by s. 7 of Act 7 of 1961.]

#### **46 Control of payment of compensation**

(1) Any compensation payable to or in respect of any person under this Act may, in the discretion of the commissioner and for reasons deemed by him to be sufficient, be-

- (a) paid to the workman or dependant entitled thereto or to any other person on behalf of such workman or dependant, in instalments or in such other manner as the commissioner may direct;

[Para. (a) substituted by s. 21 of Act 36 of 1949.]

- (b) invested or applied from time to time as the commissioner may deem to the advantage of the workman, or those dependent on him for maintenance;
- (c) paid to a Master of the Supreme Court, a trustee, or other person to be used subject to such conditions as may be imposed by the commissioner;

(d) applied partly in one and partly in another of the methods mentioned in paragraphs (a), (b) and (c), as the commissioner may determine.

(2) Notwithstanding any other provision of this Act, where compensation is payable by an employer individually liable, the commissioner may direct the said employer to pay the whole or any portion of the compensation on or as from a specified date to the commissioner to be dealt with as in subsection (1) provided.

(3) On the death of a workman the unpaid balance of any accrued compensation shall be paid to such dependants as the commissioner may determine, and shall not form part of the estate of the deceased workman: Provided that where no dependants exist the commissioner may, in his discretion, pay such balance or part thereof to any creditor of the estate of the deceased workman.

#### **47 Advances against compensation**

In anticipation of the award of compensation, the commissioner may, where in his opinion the interest or pressing need of the workman warrants it, make or order an advance not exceeding R500 in all to be made to or on behalf of the workman on such conditions as the commissioner may think fit.

[S. 47 amended by s. 19 of Act 51 of 1956 and by s. 8 of Act 7 of 1961 and substituted by s. 18 of Act 29 of 1984.]

#### **48 Payment of compensation by employers individually liable**

(1) Where a pension is payable by an employer individually liable, the payments referred to in section *thirty-nine* or *forty* shall be made-

- (a) by such employer; or
- (b) on agreement with the commissioner, by the commissioner from funds furnished by the employer for this purpose:

Provided that, in either event, the employer shall, if the commissioner so directs, deposit with the commissioner such funds or furnish to the commissioner such security as the commissioner may consider sufficient to ensure payment of the pension.

[Sub-s. (1) amended by s. 22 (a) of Act 36 of 1949.]

(2) .....

[Sub-s. (2) deleted by s. 22 (b) of Act 36 of 1949.]

(3) When an employer has deposited with the commissioner funds or securities in terms of this section, and thereafter-

- (a) his estate is sequestrated or assigned under the law relating to insolvency, or
- (b) if such employer is a company, it is wound up under the law relating to companies, or
- (c) such employer enters into compromise with his creditors, whereunder he is released from any part of his liabilities, otherwise than by payment in full,

then, notwithstanding anything to the contrary in any other law, any unused part of the funds or securities so deposited shall vest in the accident fund, which shall thereupon become liable for the payment of the compensation, medical aid or other benefit in respect of which such funds or securities were deposited.

#### **49 Payment of lump sum in lieu of pension**

(1) When a pension under section 39 or 40 does not exceed a prescribed amount, the commissioner may, in his discretion, pay or order the payment of a lump sum in lieu

of a portion or the whole of such pension.

[Sub-s. (1) substituted by s. 8 (a) of Act 28 of 1977.]

(2) When such pension exceeds the prescribed amount, the commissioner may, in his discretion, in lieu of a portion of such pension, pay or order the payment of a lump sum not exceeding the maximum sum, which, in the opinion of the commissioner, would have been payable under subsection (1) had the pension not exceeded the prescribed amount: Provided that if the balance of the pension payable is less than ten rand per month, the commissioner may pay or order the payment of a lump sum in lieu of the whole of such pension.

[Sub-s. (2) amended by s. 23 of Act 27 of 1945, by s. 23 of Act 36 of 1949 and by s. 9 of Act 7 of 1961 and substituted by s. 8 (b) of Act 28 of 1977.]

(3) Any lump sum under this section shall be calculated on a basis determined by the commissioner and payment thereof shall be subject to the control of the commissioner as provided in section *forty-six*.

## CHAPTER VI RECOVERY OF COMPENSATION (ss 50-63) (A) *Notice of Accidents* (ss 50-53)

### 50 Notice of accident by the workman

(1) In order that compensation may be obtained under this Act, written notice of the accident, in the prescribed manner, shall be given by or on behalf of the workman to the employer as soon as is reasonably possible after the accident: Provided that-

- (a) failure to give such notice shall not bar the right to compensation if it be proved that the employer had knowledge of the accident from any other source at or about the time of the accident; and
- (b) failure to give such notice or any defect or inaccuracy therein shall not bar the right to compensation if in the opinion of the commissioner-
  - (i) the accident fund or the employer is not, or would not, if notice or an amended notice were then given, be seriously prejudiced by such failure, defect or inaccuracy; or

[Sub-para. (i) amended by s. 24 (a) of Act 27 of 1945.]

- (ii) such failure, defect or inaccuracy was occasioned by mistake, absence from the Republic, or other reasonable cause.

(2) Notwithstanding the provisions of subsection (1)-

- (a) in the case of an accident to a seaman the master or other person in command of the ship shall be deemed to have received notice of the accident although no notice in terms of subsection (1) has actually been given to him and for the purposes of this section the master or such other person shall be deemed to be the employer; and
- (b) in the case of an accident happening outside the Republic to a workman employed on any aircraft the owner or person in command of the aircraft shall be deemed to have received notice of the accident although no notice in terms of subsection (1) has actually been given to him, and for the purposes of this section such owner or person in command shall be deemed to be the employer.

[Para. (b) amended by s. 24 (b) of Act 27 of 1945.]

### 51 Employer to give notice of accident to commissioner

(1) Every employer shall forthwith, after having been notified or having gained knowledge of the happening of an accident to a workman, report the accident to the commissioner in the manner prescribed. Any employer who fails to comply with the provisions of this subsection shall be guilty of an offence.

(2) Notwithstanding the provisions of subsection (1) an employer individually liable may, if specially authorized by the commissioner, report such accidents at such intervals and in such manner as may be approved by the commissioner.

(3) For the purposes of this section, 'accident' includes any personal injury sustained by a workman and reported by him to his employer, if in making the report the workman alleges that such injury arose out of and in the course of his employment.

[Sub-s. (3) added by s. 24 of Act 36 of 1949.]

(4) An employer other than an employer individually liable who fails to report the happening of an accident to a workman in his employ in the prescribed manner and within thirty days after having been notified or having gained knowledge thereof, shall, in addition to any other penalty, pay to the commissioner a penalty as determined by the commissioner, but not exceeding the full amount of the compensation payable in respect of such an accident: Provided that the commissioner, if satisfied that the default was due to inadvertence or to some cause over which the employer had no control, or that the payment of the full amount of the capitalized value as determined in terms of subsection (5), would be likely to result in the insolvency or assignment of the estate of such employer or, where the employer is a company, the winding-up thereof, may waive the provisions of this subsection in whole or in part or accept payment in instalments or otherwise as the commissioner may determine.

[Sub-s. (4) added by s. 10 of Act 11 of 1974.]

(5) For the purpose of subsection (4) 'compensation' includes the cost of medical aid and any amount paid or payable in terms of section 40 (2), 44 or 76 (2), and in the case of a continuing liability, also the capitalized value, as determined by the commissioner, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[Sub-s. (5) added by s. 10 of Act 11 of 1974 and substituted by s. 9 of Act 28 of 1977.]

## **52 Additional information by workman and employer**

(1) The workman shall supply such further particulars of the accident and the injury as his employer or the commissioner may require.

(2) The employer shall supply such further particulars as the commissioner may require of the accident to the workman, his injuries, his earnings, and such other matters as are within his knowledge.

(3) A workman or employer who fails to comply with the provisions of this section shall be guilty of an offence.

## **53 Procedure upon information of accident**

Whenever an accident is reported to the commissioner, or whenever it shall come to the notice of the commissioner by other means that an accident has happened which might result in a claim under this Act, the commissioner shall-

- (a) make or cause to be made such inquiry and take such other steps as he may deem necessary to enable him to decide upon any claim or question of liability under this Act;

- (b) at the request of an injured workman or of his employer, furnish such information as the commissioner deems necessary to enable such workman or employer to comply with any requirements of this Act.

**(B) Lodging of Claims (s 54-55)**

**54 Claim for compensation**

(1) Save as provided in subsections (2) and (3) of this section no claim for compensation under this Act shall be entertained unless it is lodged by or on behalf of the claimant in the prescribed manner with the commissioner or the employer concerned within six months after the date of the accident, or in the case of death within six months after the death.

[Sub-s. (1) amended by s. 25 (a) of Act 36 of 1949.]

(2) If an accident happens to a seaman or airman then a claim for compensation may, except when the seaman or airman is the person in command of the ship or aircraft, be presented to the person in command of the ship or aircraft as if he were the employer, or to the employer himself, and for the purpose of any claim for compensation the person in command or the employer shall, at the option of the claimant, be deemed to be the employer and shall carry out the obligations of an employer under this Act. If the accident happened to any such seaman or airman outside the Republic resulting in death a claim for compensation shall be made within six months after news of the death has been received by any dependant claiming compensation.

(3) The provisions of section *fifty* shall *mutatis mutandis* apply in respect of any failure to make a claim or in respect of any defect or inaccuracy in any claim made under subsection (1) or (2) of this section: Provided that the right to benefits under this Act shall lapse if the accident does not come to the notice of the employer or of the commissioner or of the mutual association (if any) responsible for the payment of those benefits, within 12 months of the date of the accident.

[Sub-s. (3) amended by s. 25 (b) of Act 36 of 1949 and by s. 19 of Act 29 of 1984.]

**55 Particulars in support of claim**

(1) A workman claiming compensation shall, with his claim, or thereafter at the request of the commissioner, submit such information and documents as may be prescribed or as the commissioner may direct.

(2) An employer, unless specially authorized in terms of section *sixty-three*, shall forthwith upon receipt of a claim submitted to him under section *fifty-four* transmit the claim and any information or document furnished under subsection (1) of this section to the commissioner.

**(C) Procedure for Determination of Claims (ss 56-63)**

**56 Procedure on presentation of claim**

(1) Upon receipt of any claim under section *fifty-four* the commissioner, after making or causing to be made any enquiry which he may deem necessary, shall consider and determine such claim in the prescribed manner: Provided that, if the commissioner considers that a formal hearing is necessary, he shall fix a time and place therefor.

(2) The commissioner shall forthwith give notice in the prescribed manner to the claimant and to the employer of the time and place of such formal hearing.

(3) If the commissioner considers that the attendance of any witness, including the claimant and the employer, is necessary in order to enable him to decide any question arising out of the claim, he may issue a subpoena for the attendance of such person.

(4) Upon receiving a request from any person for the subpoenaing of a witness the commissioner shall, if he considers that the presence of such witness is desirable, issue such a subpoena, but if he does not consider such presence desirable he shall issue a subpoena only if the party making the request deposits with the commissioner a sum sufficient to cover the necessary expenses to be incurred by the witness, together with the costs of service of such subpoena.

#### **57 Commissioner's powers at hearing of claim**

(1) Upon the hearing of any claim the commissioner shall receive any evidence presented by the parties which he deems relevant to any question for his decision and may call for and receive any evidence which he deems necessary.

(2) The commissioner may from time to time adjourn or postpone any hearing for the purpose of continuing it at some time or place deemed by him to be more proper or convenient.

#### **58 Keeping of records**

The commissioner shall keep or cause to be kept a true record of any proceedings before him upon the hearing of any claim and upon payment of the prescribed fee any person may at any time obtain copies of the record or of any part thereof.

#### **59 Appearance of parties**

(1) Every party to a claim for compensation may appear before the commissioner-

- (a) in person; or
- (b) by a member of his family; or
- (c) by a person in the regular employment of such party; or
- (d) by an advocate or an attorney; or
- (e) in the case of a workman, by an officer of a trade union, or in the case of an employer by an officer of an employers' organization; or
- (f) .....

[Para. (f) deleted by s. 1 (2) of Act 114 of 1991.]

- (g) with the leave of the commissioner by any other person.

(2) No person other than an advocate or attorney shall be entitled to recover any fee or costs or reward except such necessary expenses as may be allowed by the commissioner. No fee or costs whatsoever shall be recoverable from a workman or an employer, in connection with any compensation proceedings, save with the approval of the commissioner.

(3) The commissioner of his own motion or on an *ex parte* application by a party to any compensation proceedings may order an attorney employed by such party in connection with such proceedings to hand in a statement showing what he has received or contracted to obtain from his client and also to submit to taxation his bill of costs against such party including attorney and client costs. Upon such taxation the commissioner may allow such fees, costs and expenses as in the circumstances he considers reasonable. Any payment made or reward given in excess of the amount so allowed shall be refunded, and any contract to make any payment or give any reward in excess of the amount so allowed shall be void as to that excess.

(4) Any person who accepts or attempts to recover any fee, costs, reward or expenses in respect of any assistance rendered to a workman in connection with any compensation proceedings under this Act, to which he is not entitled under subsection (2) or (3), shall be guilty of an offence.

[Sub-s. (4) added by s. 25 of Act 27 of 1945.]

(5) For the purpose of this section 'compensation proceedings' includes any act done in connection with a claim for compensation, whether or not such claim forms the subject of a formal hearing under the provisions of this Chapter.

[Sub-s. (5) added by s. 25 of Act 27 of 1945.]

#### **60 Workman to submit to medical examination**

A workman who claims compensation or to whom compensation has been paid or is payable shall when so required by his employer or the commissioner, and after reasonable notice, submit himself for examination by a medical practitioner nominated by the employer or the commissioner as the case may be, at the time and place notified, provided such time and place are reasonable. Any necessary expenses incurred by the workman in complying with the provisions of this section as determined by the commissioner, shall be paid by the employer or by the commissioner, as the case may be. In the event of the workman being, in the opinion of any medical practitioner not in a fit state to attend on the medical practitioner named in the notice, the workman or some person on his behalf shall notify the employer or the commissioner as the case may be of that fact, and may require the medical practitioner so named to attend on the workman at a reasonable time and place to be agreed upon. The workman shall be entitled at his own expense to have a medical practitioner nominated by himself present at such examination.

#### **61 .....**

[S. 61 repealed by s. 10 of Act 7 of 1961.]

#### **62 Recovery of compensation or other benefit**

Whenever any compensation or other pecuniary benefit must, in terms of any provision of this Act, be paid to a workman by some person other than the commissioner, the commissioner may make an order in the prescribed form, and such order shall upon being filed with the clerk of the magistrate's court of the area in which the person liable to pay such compensation or benefit resides or has his place of business, have all the effects of, and may be executed as if it were, a civil judgment lawfully given in that court in favour of the commissioner. Any amount recovered by the commissioner in terms of any order so executed shall be paid into the accident fund, and the provisions of section *forty-six* shall, *mutatis mutandis*, apply in respect of such amount.

#### **63 Agreements as to compensation**

(1) Notwithstanding anything to the contrary in this Act, the commissioner may authorise an employer individually liable, or a mutual association with which such employer is insured, subject to such conditions as he may determine, to make provisional settlements of claims for compensation with his workmen, including provisional settlements in respect of lump sums payable under section 45 or 49 in lieu of pensions: Provided that such employer or association shall report such provisional settlements to the commissioner with such particulars and at such intervals as the commissioner may determine, and the commissioner shall either make an award confirming any such provisional settlement or shall deal with any such claim in the manner provided in section 56 as if such provisional settlement had not been made.

[Sub-s. (1) substituted by s. 10 of Act 28 of 1977.]

(2) Notwithstanding anything to the contrary in this Act, the commissioner may, subject to such conditions as he may determine, approve of any scheme for the settlement of claims for compensation in respect of accidents to workmen or any specified group of

workmen in the employment of any employer referred to in subparagraph (i) of paragraph (a) of subsection (1) of section *seventy*. Provided that the commissioner is satisfied, after consultation with the assessors concerned (if any), that the benefits under such scheme are more favourable to the workman concerned than the benefits under this Act.

**CHAPTER VII**  
**THE ACCIDENT AND RESERVE FUNDS (ss 64-74)**  
**(A) Establishment of Funds (ss 64-67)**

**64 Establishment of accident fund**

There shall be established on a date fixed by the Minister a fund to be known as the accident fund, which shall consist of

- (a) the assessments paid by employers under this Act;
- (b) any moneys paid by employers to the commissioner under this Act;
- (c) any moneys paid as penalties imposed under this Act other than by a court of law;
- (d) any interest from investments of the accident fund and reserve fund;
- (e) any sums transferred from the reserve fund in terms of section *sixty-six*;
- (f) any advances made in terms of section *nineteen*;
- (g) any payments made to the commissioner in terms of section *seventy-four*, and
- (h) any other sums to which the fund may become entitled.

**65 Application of accident fund**

(1) The accident fund shall, subject to the provisions of this Act, be under the control of the commissioner and its funds shall be applied by the commissioner to-

- (a) the payment of compensation, medical aid or other pecuniary benefit to or on behalf of or in respect of workmen under this Act wherever no other person is made liable for such payment;
- (b) the creation and maintenance of a reserve fund in cash or investments, or both;
- (c) any expenses incurred in or in connection with the exercise of his powers under subsection (2) of section *fourteen*;  
[Para. (c) substituted by s. 2 of Act 5 of 1951]
- (d) the repayment of advances made to the accident fund in terms of section *nineteen*;
- (e) the reimbursement of the State Revenue Fund in respect of remuneration paid to officers in terms of section *twenty-one*;
- (f) the payment of the prescribed remuneration and travelling and subsistence allowances to assessors;
- (g) any charges necessary for or in connection with the medical examination of workmen;
- (h) the payment of witness fees as provided in subsection (7) of section *sixteen*; and
- (i) the payment of any other expenditure incurred by the commissioner in carrying out his functions under this Act.

(2) At the discretion of the commissioner any surplus in the accident fund may be applied to the reduction of future annual assessments made under section *sixty-nine* or may be transferred to the reserve fund, or may be allowed to remain in the accident fund,

and any deficiency in the accident fund may be made good by an increase in the amount of any future assessment on employers in terms of section *sixty-nine* or by a transfer from the reserve fund.

#### **66 Establishment of reserve fund**

(1) There shall be established a fund to be known as the reserve fund, the amount of which shall be in the discretion of the commissioner, as a provision against unforeseen demands upon the accident fund and for the purpose of stabilizing from year to year as far as practicable the rates of assessments fixed under section *sixty-nine*, and for such other purposes as the commissioner considers advisable.

(2) The reserve fund shall consist of appropriations from the accident fund made from time to time at the discretion of the commissioner, and shall be applied by transferring to the accident fund such moneys as may from time to time be deemed necessary by the commissioner to fulfil the purposes set forth in subsection (1).

#### **67 Valuation of accident fund**

The assets and liabilities of the accident fund shall from time to time as considered necessary by the commissioner, and in any case at intervals of not more than three years, be valued by an actuary appointed by the Minister, in order to determine the sufficiency of the fund, and the result of such valuation shall be included in the annual report of the commissioner next succeeding the completion of the valuation.

#### **(B) Rendering of Wage Returns by Employers (s 68)**

#### **68 Wage-statements to be furnished by employers**

(1) Every employer liable to assessment shall between the first and thirty-first day of March in each year, or if he becomes liable to be assessed after the last mentioned date, within one month after having become so liable, transmit to the commissioner a statement in the prescribed form, certified by him as true, showing-

- (a) the amount of wages paid to his workmen during the period with effect from the first day of March of the immediately preceding year up to and including the last day of February of the following year;
- (b) .....

[Para. (b) deleted by s. 11 of Act 7 of 1961.]

- (c) such other information as may be prescribed or as the commissioner may require from him.

[Sub-s. (1) amended by s. 7 (1) of Act 9 of 1970.]

(2) Where an employer carries on business in more than one place or carries on more than one class of business the commissioner may require from him a separate statement in respect of each place or class.

(3) If in any statement transmitted to the commissioner in terms of subsection (1) the amount of the wages alleged to have been paid during any period is less than the amount actually paid, the employer who transmitted such statement may be required to pay to the commissioner as a penalty such proportion of the difference between the amount stated and the correct amount, not exceeding ten per cent, as the commissioner may determine.

(4) If in any such statement the estimate of the wages which the employer expects to pay during any period is, in the opinion of the commissioner, too low or if the employer has failed to transmit such statement the commissioner may himself estimate the wages which the employer will probably pay during that period.

(5) An employer who fails to comply with the provisions of subsection (1), or with any requirement of the commissioner under subsection (2) or (3) shall be guilty of an offence.

**(C) *Levying and Recovery of Assessments and other Charges (ss 69-74)***

**69 Assessments on employers**

(1) The commissioner shall as soon as practicable after the thirty-first day of March in every year or in the case of an employer becoming liable to be assessed after that date, as soon as practicable after receipt of the statement referred to in section 68, assess every employer other than an employer exempted from payment of assessments in terms of section 70 on the basis of such percentage of the annual wages of his workmen as the commissioner deems necessary for the requirements of the accident fund for the year of assessment: Provided that the commissioner may-

- (i) in respect of any employer or class of employers adopt such alternative method of assessment as he may deem necessary; or
- (ii) levy a minimum assessment on any employer.

[Sub-s. (1) amended by s. 26 (a) of Act 27 of 1945 and by s. 8 of Act 9 of 1970.]

(2) Save as otherwise provided in this Act, the rates of assessment of any employer shall be fixed by the commissioner from time to time in his discretion according to the estimated risk and cost of accidents.

(3) In estimating the rates of assessments deemed to be necessary for the requirements of the accident fund, the commissioner shall make provision for the capitalized value of pensions, and any other liabilities due or likely to become due in respect of accidents during the year of assessment.

(4) For the purposes of assessment, wages shall be determined in such manner as may from time to time be prescribed.

(5) When the wages actually paid by an employer during any period have been ascertained, his assessment in respect of that period shall be adjusted accordingly.

(6) If the annual assessment is less than the adjusted assessment, the employer shall pay the difference and if the annual assessment is more than the adjusted assessment, the commissioner shall refund the difference to the employer or credit him therewith in respect of his following annual assessment.

(7) If an employer has failed to transmit within the prescribed time a statement in terms of section *sixty-eight* in respect of any period, the commissioner may-

- (a) assess him and such assessment shall be final and not subject to adjustment under subsection (5) or (6); and
- (b) in his discretion, impose upon and recover from the employer, a penalty, to be determined by him, not exceeding ten per cent of the amount so assessed, or one rand, whichever is the greater:

[Para. (b) amended by s. 12 of Act 7 of 1961.]

Provided that if it is subsequently ascertained that the amount assessed under paragraph (a) would have been greater had the employer transmitted the required statement within the prescribed time, the employer shall pay to the commissioner the difference between the amount assessed and the amount which would have been assessed had the statement been available.

[Sub-s. (7) substituted by s. 26 (b) of Act 27 of 1945.]

(8) Every assessment of an employer shall be paid at such times and places and in

such manner as the commissioner may determine, with interest on any amounts overdue at such rate not exceeding ten per cent per annum as the commissioner may fix.

(9) If an employer liable to assessment who in respect of any period, has transmitted to the commissioner the statement referred to in subsection (1) of section *sixty-eight*, has not been assessed in respect of that period, he shall nevertheless be liable at any time thereafter to be assessed.

#### **70 Certain employers exempt from assessments**

(1) Subject to the provisions of subsection (1A), assessments for the benefit of the accident fund shall not be payable in respect of workmen-

- (a) in the employ of
- (i) the State, including Parliament, the government of any territory which is a self-governing territory within the Republic in terms of any law, a territorial authority established under the Black Authorities Act, 1951 (Act 68 of 1951), and a legislative assembly established under the National States Constitution Act, 1971 (Act 21 of 1971);

[Sub-para. (i) amended by s. 13 of Act 7 of 1961, substituted by s. 11 (1) (a) of Act 11 of 1974 (but part to be proclaimed) and amended by Proclamation 45 of 1990 and by s. 14 (1) of Act 108 of 1991.]

- (ii) a local authority employing five hundred or more European workmen, if such local authority has obtained from the commissioner a certificate of exemption, the issue and renewal of which shall be subject to such conditions as the commissioner may determine; or
- (b) whose employer has, with the approval of the commissioner, obtained from a mutual association a policy of insurance for the full extent of his potential liability under this Act to all workmen employed by him, and for so long as he maintains such policy in force.

[Sub-s. (1) amended by s. 2 (a) of Act 27 of 1970.]

(1A) An exemption contemplated in subsection (1) (a) (i) shall apply in respect of a particular territorial authority or legislative council mentioned therein only from a date determined by the commissioner in respect of such authority or council after consultation with the Director-General: Co-operation and Development, and in respect of a legislative assembly mentioned therein, from the date on which such legislative assembly is established.

[Sub-s. (1A) inserted by s. 2 (b) of Act 27 of 1970 and substituted by s. 11 (1) (b) of Act 11 of 1974 and by s. 20 of Act 29 of 1984 but part to be proclaimed.]

(2) The commissioner may, in his discretion, upon the application of any employer referred to in subsection (1) of this section permit such employer to pay assessments to the accident fund in respect of his workmen and any such employer referred to in subsection (1) of this section shall from a date to be fixed by the commissioner cease to be individually liable to pay compensation except in respect of accidents which occurred before such date.

#### **71 Variation of rate of assessment**

(1) When in the opinion of the commissioner, the business of an employer is designed, equipped, organized or conducted in a manner which is specially calculated to

prevent the occurrence of accidents to workmen and the number or cost of accidents in consequence thereof is or is likely to be considerably less than those usually obtaining in other businesses of that class, the commissioner may, in his discretion, use a lower percentage of annual wages in calculating the annual assessment of such employer than is used in the assessment of other employers in that business.

(2) Where the cost or number of accidents which have occurred or, in the opinion of the commissioner, are likely to occur, is greater than the commissioner considers would have occurred had the business of the employer been designed, equipped, organized or conducted in a manner which is specially calculated to prevent the occurrence of accidents, the commissioner may, in his discretion, assess such employer on the basis of a higher percentage of the annual wages of his workmen than other employers in a similar class of business.

(3) If, during any period, the accident experience of an employer is, in the opinion of the commissioner, more favourable than the average accident experience of employers in his class of business, the commissioner may, in his discretion, award such employer a special rebate on any assessments payable or paid by him.

[Sub-s. (3) amended by s. 26 of Act 36 of 1949.]

(4) If, during any period, the accident experience of an employer is, in the opinion of the commissioner, less favourable than the average accident experience for employers in his class of business, the commissioner may, in his discretion, assess such employer for a higher percentage of the annual wages of his workmen in respect of any subsequent period.

## **72 Assessments to be paid by employers to the commissioner**

(1) The amount of any assessment shall be paid by an employer to the commissioner within thirty days after the date specified in the notice of assessment, unless the commissioner has, on the application of the employer, agreed to accept payment by instalments on such conditions as he may specify, and where payment is made by instalments, the said instalments shall be paid at the times specified by the commissioner.

(2) The notice of assessment may be sent to the employer by post either in a registered or an unregistered letter.

## **73 Failure to pay assessment or other moneys**

(1) If an assessment or any instalment thereof is not paid by an employer at the time when it becomes payable, the defaulting employer shall be liable to pay as a penalty for his default such percentage (not exceeding ten per cent) of the amount unpaid as the commissioner may determine.

(2) Any employer who fails to pay his assessment or to render within the prescribed period the returns referred to in section *sixty-eight* shall, in addition to any other penalty, pay to the commissioner a penalty as determined by the commissioner not exceeding the full amount of the compensation payable in respect of any accident to a workman in his employment during the period of such default: Provided that the commissioner, if satisfied that the default was due to inadvertence or to some cause over which the employer had no control, or that the payment of the full amount of the capitalized value would be likely to result in the insolvency or assignment of the estate of such employer or where the employer is a company, the winding up thereof, may waive the provisions of this subsection in whole or in part or accept payment in instalments or

otherwise as the commissioner may determine.

[Sub-s. (2) amended by s. 27 (a) of Act 27 of 1945.]

(3) Any employer who contravenes or fails to comply with any provision of this Act in regard to the payment of assessments or penalties, or any other moneys payable to the commissioner under this Act, shall be guilty of an offence.

(4) Whenever an employer fails to pay to the commissioner any money due the commissioner may make an order in the prescribed form, and such order shall, on being filed with the clerk of the magistrate's court of the area in which the employer concerned resides or has his place of business, have all the effects of, and may be executed as if it were a civil judgment lawfully given in that court in favour of the commissioner.

(5) For the purpose of this section 'compensation' includes the cost of medical aid and any amount paid or payable in terms of section 40 (2), 44 or 76 (2), and in the case of a continuing liability, also the capitalized value, as determined by the commissioner, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[Sub-s. (5) added by s. 27 (b) of Act 27 of 1945 and substituted by s. 11 of Act 28 of 1977.]

#### **74 Contributions by employers individually liable**

(1) Notwithstanding anything to the contrary in this Act, the employers individually liable referred to in paragraph (a) of subsection (1) of section *seventy* and every mutual association shall pay annually to the commissioner, in such manner and at such times as he may determine, such proportion of the expenses incurred by the commissioner in the administration of this Act as he may deem equitable.

(2) The commissioner shall, as soon as possible after the close of each financial year estimate the loss incurred during that year as a result of compensation becoming payable out of the accident fund in respect of workmen for whom their employers have failed to pay assessments. The loss shall consist of the difference between such compensation, as estimated by the commissioner, together with any expenses incurred or likely to be incurred in connection therewith and any amounts recovered or likely to be recovered from such employers, whether by way of compensation, penalty or otherwise. The loss for any financial year may be revised by the commissioner in subsequent years according to the amounts actually paid or recovered. The employers individually liable referred to in paragraph (a) of subsection (1) of section *seventy* and every mutual association shall pay to the commissioner, in such manner and at such times as he may determine, such proportion of the said loss as he may deem equitable.

[Sub-s. (2) amended by s. 28 (1) (a) of Act 27 of 1945.]

(3) Any amount payable by an employer or by a mutual association under this section may, subject to the provisions of section *four* of the Crown Liabilities Act, 1910 (Act 1 of 1910), be recovered by the commissioner in the same manner as assessments and the provisions of this Act relating to the assessments shall *mutatis mutandis* apply to every such amount.

[Sub-s. (3) amended by s. 20 of Act 51 of 1956 and by Proclamation 45 of 1990.]

(4) For the purpose of this section 'compensation' includes the cost of medical aid and any amount paid or payable in terms of section 40 (2), 44 or 76 (2), and in the case of a continuing liability, also the capitalized value, as determined by the commissioner, of

the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[Sub-s. (4) substituted by s. 28 (1) (b) of Act 27 of 1945 and by s. 12 of Act 28 of 1977.]

### **CHAPTER VIII** **MEDICAL AID (ss 75-81bis)**

#### **75 First aid**

(1) An employer shall furnish and maintain such appliances and services for the rendering of first aid to his workmen in case of an accident to them as may be prescribed in respect of the class of business in which he is engaged: Provided that the provisions of this section shall not apply to an employer who in compliance with any requirement of the Mines and Works Act, 1956 (Act 27 of 1956), or the Machinery and Occupational Safety Act, 1983 (Act 6 of 1983), maintains appliances and services for rendering first aid to his employees in case of an accident or has under any such law been granted exemption from such requirements.

[Sub-s. (1) amended by s. 21 of Act 51 of 1956, by s. 21 of Act 29 of 1984 and by Proclamation 45 of 1990.]

(2) Failure to comply with the provisions of this section shall be an offence.

#### **76 Conveyance of injured workman**

(1) In the event of an accident happening to a workman which necessitates his removal to a hospital or his residence the employer of such workman shall forthwith provide the necessary conveyance therefor.

(2) The commissioner or the employer individually liable, as the case may be, shall defray the reasonable expenses (as determined by the commissioner) incurred by the employer or any other person in respect of such removal.

(3) Any employer who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

#### **77 Medical expenses**

(1) The commissioner or the employer individually liable, as the case may be, shall for a period not exceeding two years from the date of the accident defray the reasonable expenses incurred by or on behalf of a workman in respect of medical aid necessitated by an accident.

[Sub-s. (1) amended by s. 27 (a) of Act 36 of 1949 and substituted by s. 22 of Act 51 of 1956.]

(2) Where, in the opinion of the commissioner, further or special medical aid in addition to that referred to in subsection (1), will reduce the disablement from which the workman suffers, he may defray or direct the employer individually liable to defray, as the case may be, the expenses incurred in respect of such medical aid.

[Sub-s. (2) amended by s. 29 (a) of Act 27 of 1945 and by s. 27 (b) of Act 36 of 1949 and substituted by s. 22 of Act 51 of 1956.]

(3) .....

[Sub-s. (3) deleted by s. 29 (b) of Act 27 of 1945.]

(4) For the purpose of further or special medical aid under subsection (2), the commissioner may place the workman under the treatment of a medical practitioner nominated by him and may give such other directions in regard to the treatment of the workman as he deems expedient.

(5) Any employer who fails to make any payment in respect of medical aid which under this section he is required to make shall be guilty of an offence.

(6) The commissioner may-

- (a) notwithstanding anything to the contrary in this section contained, from time to time after consultation with the Medical Association of South Africa, by notice in the *Gazette* issue instructions whereby it shall, in such cases and in such circumstances as may be specified in the instructions, be obligatory that medical aid referred to in this section shall be received in an institution to be determined in accordance with such directions and which is controlled by the commissioner or by or under any body, organization or scheme referred to in section 14 (2), to which the commissioner grants or granted financial assistance;
- (b) at any time by like notice cancel or after the said consultation amend the said instructions.

[Sub-s. (6) added by s. 9 of Act 9 of 1970.]

(7) The instructions referred to in subsection (6) may differ in respect of different classes of medical aid, areas or workmen.

[Sub-s. (7) added by s. 9 of Act 9 of 1970.]

(8) Notwithstanding anything to the contrary in this section contained, the commissioner or an employer with the consent of the commissioner, may refuse to pay any expenses incurred in respect of medical aid referred to in this section, if the medical aid has been received contrary to instructions issued under subsection (6).

[Sub-s. (8) added by s. 9 of Act 9 of 1970.]

#### **78 Dispute as to treatment and medical report**

(1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided or to be provided in terms of this chapter shall be determined by the commissioner.

(2) The commissioner may after consultation with the Medical Association of South Africa make regulations for the submission to the commissioner, without additional charge, of reports from time to time by medical practitioners who have attended or been consulted in respect of workmen injured by accident.

[Sub-s. (2) amended by s. 28 of Act 36 of 1949.]

#### **79 Fees for medical aid to be prescribed**

Payment for medical aid shall be in accordance with the scale prescribed from time to time by the commissioner, and no claim in excess of the charges fixed by that scale or, if no charge has been so fixed, in excess of the charges deemed by the commissioner to be reasonable, shall lie against the commissioner, or any workman or his employer in respect of any such medical aid: Provided that the tariff of fees for medical aid affecting the Medical Association of South Africa and the Dental Association of South Africa, respectively, shall be fixed after consultation with those associations.

[S. 79 amended by s. 30 of Act 27 of 1945 and by s. 29 of Act 36 of 1949 and substituted by s. 23 of Act 29 of 1984.]

#### **80 Contributions from workman towards cost of medical aid forbidden**

(1) No employer shall receive from a workman any contribution towards the expense of medical aid rendered or to be rendered to such workman in terms of this Act.

(2) Any employer acting in contravention of this section shall be guilty of an

offence and shall, in addition, be ordered by the commissioner to refund any sum so received. Such order shall, on being filed in the manner prescribed in section *sixty-two* be enforceable as in that section prescribed. Any amount recovered by the commissioner under any such order shall be paid by him to the workman concerned.

### **81 When employer supplies medical aid**

If any employer makes an arrangement for furnishing medical aid to his workmen injured by accident which in the opinion of the commissioner is not less favourable to the workmen than that provided for in this chapter, the commissioner may approve such an arrangement, and unless and until such approval is withdrawn the medical aid under such arrangement may be substituted for the medical aid referred to in this chapter and-

- (a) in the case of an employer individually liable he shall not be required to provide or pay for medical aid otherwise than in accordance with such arrangement; and
- (b) in the case of an employer not individually liable, the commissioner shall reimburse him out of the accident fund or reduce his assessment to such an extent as he deems equitable.

### **81bis Consultation with South African Medical and Dental Council**

The commissioner may from time to time consult the South African Medical and Dental Council established under the Medical, Dental and Pharmacy Act, 1928 (Act 13 of 1928), on questions connected with or arising out of the administration of the provisions of this Act relating to medical aid, and may for that purpose communicate to the said Council any information in his possession relating to any matter in respect of which the views of that Council are required.

[S. 81bis inserted by s. 30 of Act 36 of 1949.]

## **CHAPTER IX**

### **COMPENSATION FOR CERTAIN WIDOWS (ss 82-88)**

[Heading amended by s. 1 (2) of Act 114 of 1991.]

### **82 .....**

[S. 82 repealed by s. 24 of Act 29 of 1984.]

### **83 .....**

[S. 83 amended by s. 31 of Act 36 of 1949, substituted by s. 5 of Act 21 of 1964, amended by s. 25 of Act 29 of 1984 and repealed by s. 1 (2) of Act 114 of 1991.]

### **84 .....**

[S. 84 amended by s. 31 of Act 27 of 1945, by s. 23 of Act 51 of 1956 and by s. 14 of Act 7 of 1961, substituted by s. 5 of Act 58 of 1967, amended by s. 3 of Act 60 of 1971 and by s. 12 of Act 11 of 1974 and repealed by s. 13 of Act 28 of 1977.]

### **85 .....**

[S. 85 amended by s. 32 of Act 36 of 1949, by s. 24 of Act 51 of 1956 and by s. 15 of Act 7 of 1961, substituted by s. 6 of Act 58 of 1967, amended by s. 4 of Act 60 of 1971 and by s. 13 of Act 11 of 1974 and repealed by s. 14 of Act 28 of 1977.]

### **86 Allocation of compensation in case of death**

When a workman dies as the result of an accident and leaves as dependants two or more widows as contemplated in section 4 (3), or such widows and one or more children, the compensation payable to such dependants shall, notwithstanding the provisions of section 40, be allocated in such manner as the commissioner may from time to time determine: Provided that the compensation payable shall not in all exceed the lump sum

and pension which would have been payable in terms of the provisions of section 40 had such workman left only one such widow or only one such widow and such child or children.

[S. 86 amended by s. 32 of Act 27 of 1945, by s. 33 of Act 36 of 1949, by s. 3 of Act 5 of 1951, by s. 25 of Act 51 of 1956 and by s. 16 of Act 7 of 1961, substituted by s. 7 of Act 58 of 1967 and by s. 15 of Act 28 of 1977 and amended by s. 1 (2) of Act 114 of 1991.]

**87** .....

[S. 87 substituted by s. 33 of Act 27 of 1945 and repealed by s. 26 of Act 51 of 1956.]

**88** .....

[S. 88 repealed by s. 1 (2) of Act 114 of 1991.]

## **CHAPTER X**

### **INDUSTRIAL DISEASES (ss 89-94)**

#### **89 Compensation in respect of scheduled industrial diseases**

Where it is proved to the satisfaction of the commissioner in such manner as he may determine that the workman is suffering from a scheduled disease due to the nature of his occupation and is thereby disabled for employment, or that the death of the workman was caused by such disease, the workman shall be entitled to compensation as if such disablement or death had been caused by an accident, and the provisions of this Act shall, subject to the provisions of this Chapter, *mutatis mutandis* apply unless at the time of entering into the employment, the workman wilfully and falsely represented to the employer that he had not previously suffered from the disease: Provided that where the workman was not, at the date of the disablement or death, employed in the occupation to the nature of which the disease is due, the earnings of the workman shall be calculated on the basis of his earnings when he was last employed in such occupation.

[S. 89 amended by s. 4 of Act 5 of 1951 and by s. 17 of Act 7 of 1961 and substituted by s. 6 of Act 21 of 1964.]

#### **90 Liability to pay compensation**

In the case of an employer individually liable compensation shall be paid by the employer who last employed the workman in the occupation to the nature of which the disease is due: Provided that if the commissioner is satisfied that the workman contracted the disease while in the employment of any previous employer or that the disease was partly attributable to such employment, he may, after due notice to that employer, direct that the compensation, or such part thereof as he deems equitable, shall be paid by such employer if he is individually liable, or out of the accident fund as the case may be.

#### **91 Notice of disablement and claim for compensation**

(1) The commissioner may, in relation to any workman, fix a date which shall be regarded for the purposes of this Chapter as the date of the commencement of the disablement of such workman, and for the purposes of this Act as the date of the accident.

(2) Notice that a workman has contracted or died of a scheduled disease, and any claim for compensation arising therefrom, shall be given or made by or on behalf of the workman to his employer and to the employer who last employed him in the occupation to which the disease is alleged to be due, and such notice or claim shall be deemed to be a notice under section 50 or a claim under section 54, as the case may be.

[Sub-s. (2) amended by s. 7 of Act 21 of 1964 and substituted by s. 27 of Act 29 of 1984.]

#### **92 Presumption as to cause of disease**

(1) If a workman who becomes disabled by, or dies of a scheduled disease, other

than fibrosis of the lungs caused by mineral dust, was within twenty-four months immediately preceding the disablement or death employed in any occupation mentioned in the Second Schedule in respect of such disease, it shall be presumed, unless the contrary is proved, that the disease was due to such occupation.

[Sub-s. (1) amended by s. 18 (a) of Act 7 of 1961.]

(2) If a workman who becomes disabled by or dies of any fibrosis of the lungs caused by mineral dust, was employed in any occupation mentioned in the Second Schedule in respect of such fibrosis, it shall be presumed, unless the contrary is proved, that the fibrosis was due to such occupation.

[Sub-s. (2) added by s. 18 (b) of Act 7 of 1961.]

### **93 Compensation for other than scheduled disease**

Nothing in this Chapter shall affect the right of a workman to compensation in respect of a disease other than a scheduled disease if the contracting of that disease entitles him to compensation under any other provision of this Act.

### **94 Additions to scheduled diseases**

(1) After carrying out such investigation as he deems necessary the commissioner may recommend to the Minister the addition to or deletion from the Second Schedule of any disease or occupation: Provided that the commissioner may recommend that any such addition be of retrospective effect from a specified date.

[Sub-s. (1) amended by s. 19 of Act 7 of 1961.]

(2) The Minister may, by notice in the *Gazette*, amend the said Schedule in accordance with any such recommendation: Provided that not less than three months before the publication of such notice there was published in the *Gazette* a notice-

- (a) of the intention to publish the said notice and of its proposed contents; and
- (b) inviting any person who objects to the publication of the said notice to lodge an objection thereto in writing with the commissioner.

[Sub-s. (2) substituted by s. 5 of Act 97 of 1986.]

## **CHAPTER XI**

### **MISCELLANEOUS (ss 95-110)**

### **95 Mutual associations**

(1) The Minister may, for such period and subject to such conditions as he, after consultation with the commissioner, may determine, issue a licence to carry on the business of insurance of employers against their liabilities to workmen under this Act to a mutual association which had been licensed prior to the eighteenth day of April, 1940, under the provisions of paragraph (a) of subsection (1) of section *seventy-five* of the Workmen's Compensation Act, 1934 (Act 59 of 1934): Provided that the Minister may, from time to time, require that, in addition to any securities deposited under the Insurance Act, 1923 (Act 37 of 1923), securities considered by the commissioner to be sufficient to cover the liabilities of the mutual association under this Act be deposited with the commissioner.

[Sub-s. (1) amended by s. 7 of Act 24 of 1981.]

(2) Subject to the provisions of subsection (4) a security so deposited with the commissioner shall be used solely for making good the default of the association concerned in respect of any liability of an employer under this Act, and for payment of any costs lawfully incurred in connection with such making good or the enforcement of such liability.

(3) The Minister may from time to time determine the conditions upon which, the manner in which and the period within which any such security shall be made available to a person entitled to payment therefrom.

(4) When the Minister is satisfied that the whole or any portion of such security is no longer necessary and that the association concerned is not in a position to incur a liability payable therefrom, he shall cause such security, or portion thereof, to be returned to such association.

(5) When an association has deposited with the commissioner any such security and thereafter fails to meet in full any of its liabilities under this Act, or is placed in liquidation then, notwithstanding the provisions of any other law, such security shall vest in the commissioner for the purpose of the liabilities of the association under this Act.

(6) If at any time the Minister is satisfied that a mutual association has failed to comply with any of the conditions imposed by him in terms of subsection (1), he may suspend or withdraw the licence issued to that association under the said subsection and no appeal shall lie against his decision.

#### **96 Employers to notify commissioner**

(1) Every employer carrying on business in the Republic and not exempted under subsection (2) shall, within fourteen days of the date of commencement of this Act, or of the date on which he commences business, whichever date is the later, in the prescribed manner furnish the commissioner with the prescribed particulars of his business, and thereafter, within the period fixed by the commissioner, with such additional particulars as the commissioner may from time to time require. Such particulars shall be furnished separately in respect of each business conducted by the employer. Every such employer shall forthwith inform the commissioner of any change in the particulars so furnished.

[Sub-s. (1) amended by s. 34 of Act 36 of 1949.]

(2) The Minister may, by notice in the *Gazette*, exempt from the provisions of subsection (1), to the extent indicated in such notice, employers referred to in section 70 (1).

[Sub-s. (2) substituted by s. 28 of Act 29 of 1984.]

(3) Every person not resident in the Republic who, and every corporate body not registered in the Republic under the law relating to companies which, carries on business in the Republic or engages, in, on or above the continental shelf, in activities in connection with surveys, research, prospecting or exploitation of natural resources and in connection therewith employs a workman, shall notify the commissioner of the address of his or its chief office and of the name of his or its chief officer in the Republic, and such officer shall be authorized and required to perform the duties of an employer as provided by this Act, and shall accept service of any document issued under this Act which affects such person or body.

[Sub-s. (3) substituted by s. 10 of Act 9 of 1970.]

(4) Any person who fails to comply with the provisions of this section shall be guilty of an offence.

#### **97 Employer to keep records**

(1) Every employer shall in respect of all his workmen keep records of wages paid, time worked and payment made for piece-work and overtime, and of any other particulars prescribed and he shall at all reasonable times produce such records or a microfilm or other microform reproduction thereof, on demand, to any person authorized

under section 17 for his inspection.

(2) Every employer shall retain the records or reproduction thereof referred to in subsection (1) for a period of not less than three years after the date on which such records are made.

(3) An employer who fails to comply with any provision of this section shall be guilty of an offence.

[S. 97 substituted by s. 8 of Act 24 of 1981.]

### **98 Threats and compulsion**

Any person who, by threats or in any other manner whatever, compels or attempts to compel any workman to do or to omit to do any act the doing or omission of which deprives or is intended to deprive him of any right to compensation shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand, or, in default of payment, to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

[S. 98 amended by s. 20 of Act 7 of 1961.]

### **98bis False statements**

Any person who in a claim for compensation under this Act, or in any notice, report or statement required to be given, made or furnished under the provisions of this Act, knowingly makes or causes to be made a statement which is false in a material particular, shall be guilty of an offence.

[S. 98bis inserted by s. 34 of Act 27 of 1945.]

### **99 .....**

[S. 99 amended by s. 35 of Act 27 of 1945 and by s. 27 of Act 51 of 1956 and repealed by s. 8 of Act 6 of 1972.]

### **100 Compensation not to form part of deceased workman's estate**

Compensation under this Act in respect of the death of a workman shall not form part of his estate.

### **101 Certain documents exempt from stamp duty**

Notwithstanding anything to the contrary in any law in force relating to stamp duty, any affidavit, certificate, receipt or other document required or issued under any provision of this Act, shall be exempt from stamp duty.

### **102 Compensation may not be assigned, charged, attached or set-off**

Compensation shall not-

- (a) be capable of being assigned or charged;
- (b) be attached by the order of any court;
- (c) be set off against any debt due by the person entitled to such compensation:

Provided that the commissioner or the employer individually liable, as the case may be, may, out of any compensation payable to a workman repay either wholly or partly any amount which with the approval of the commissioner or of such employer, has after the occurrence of the accident in respect of which such compensation is payable, been advanced to such workman subject to repayment out of such compensation.

[S. 102 amended by s. 35 of Act 36 of 1949.]

### **103 Insurance companies licensed under Act 59 of 1934 to furnish information**

(1) Every insurance company and every mutual association licensed under subsection (1) of section *seventy-five* of the Workmen's Compensation Act, 1934 (Act 59

of 1934) shall, notwithstanding the repeal of the said Act, from time to time furnish to the commissioner, in the manner prescribed and on or before a specified date, the prescribed particulars in regard to the employers insured with them immediately prior to the date of commencement of this Act, the premiums paid by such employers, and such other matters as may be prescribed.

[Sub-s. (1) amended by s. 28 of Act 51 of 1956 and by Proclamation 45 of 1990.]

(2) Failure to comply with the provisions of this section shall constitute an offence.

#### **104 Evidence**

(1) Every record of a decision or award made by the commissioner and every copy or reproduction (whether obtained by microfilming or any other process) of, or extract from, an entry in any book or record kept by the commissioner, and of any document filed with the commissioner, purporting to be certified by the commissioner to be a true copy or reproduction or extract shall upon production be received in any court as *prima facie* evidence of the matters so certified without proof of the commissioner's signature.

[Sub-s. (1) substituted by s. 9 of Act 24 of 1981.]

(2) In any proceedings under this Act, or in any court, an affidavit purporting to be made by the commissioner, or by a person authorized under subsection (1) of section *seventeen* in respect of any matter investigated by him in terms of such authorization, in which it is stated-

- (a) that any person or body of persons is an employer, principal, contractor, workman or dependant under this Act; or
- (b) that any person is or has been lawfully required under this Act to pay any amount to the commissioner, or to a workman or other person named in the affidavit; or
- (c) that any amount referred to in paragraph (b), or any portion thereof had or had not been paid on a date specified in the affidavit,

and an affidavit purporting to be made by the commissioner or a person to whom powers have been delegated under subsection (3) of section *twelve*, and in which it is stated that any decision has been taken by the commissioner or has been taken by such person in pursuance of the powers so delegated to him, as the case may be, shall on its mere production in those proceedings by any persons, but subject to the provisions of subsection (3) be *prima facie* proof of the facts stated therein.

[Sub-s. (2) amended by s. 36 of Act 36 of 1949.]

(3) The person presiding over the proceedings in which any document referred to in subsection (1) or affidavit referred to in subsection (2) is adduced in evidence, may cause the commissioner or the person making the affidavit as the case may be to be subpoenaed to give oral evidence, or may cause written interrogatories to be submitted to him for reply and such interrogatories and any reply on oath purporting to be a reply from such person shall in like manner be admissible as evidence in such proceedings.

#### **105 Penalties**

(1) Any person who is convicted of an offence in terms of section 73 (3), shall be liable to a fine not exceeding R500 or in default of payment to imprisonment for a period not exceeding one year, or to both that fine and that imprisonment.

(2) Any person who is convicted of an offence in terms of this Act for which no

penalty is otherwise provided, shall be liable to a fine not exceeding R200 or in default of payment to imprisonment for a period not exceeding three months, or to both that fine and that imprisonment.

[S. 105 amended by s. 21 of Act 7 of 1961 and substituted by s. 29 of Act 29 of 1984.]

### **106 Reciprocal arrangements for the administration of compensation**

For the purpose of giving effect to any convention with a foreign State providing for reciprocity in matters relating to compensation to workmen for accidents causing disablement or death the Minister may make rules by notice in the *Gazette* including rules-

- (a) for determining in any case where a workman is entitled to compensation both under this Act and under the law of any such country with which the convention is made, under the law of which party to the convention such workman or his dependants shall be entitled to recover compensation;
- (b) for conferring on the commissioner, powers for the admission of evidence taken in any such country, and the procuring and taking of evidence for use in any such country or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the respective laws of any such country;  
[Para. (b) amended by s. 37 of Act 36 of 1949.]
- (c) whereby compensation awarded in the territory of any such country to persons resident or becoming resident in the Republic, may be transferred to and administered by the commissioner, and whereby compensation awarded under this Act to persons resident or becoming resident in the territory of any such country may be transferred to and administered by a competent authority in that territory.

[S. 106 amended by s. 30 of Act 29 of 1984 and by ss. 46 and 47 of Act 97 of 1986.]

### **107 Regulations**

- (1) The Minister may make regulations as to-
  - (a) the place of meeting and the procedure to be followed at any meeting of the commissioner and assessors or at any proceeding under this Act with which assessors are concerned, or at any investigation under this Act;
  - (b) the procedure to be followed in connection with notices of accidents and claims for compensation and the form of, and particulars to be submitted with, such notices and claims;
  - (c) the forms to be used in connection with such procedure or to be used for any other matters dealt with by this Act;
  - (d) subject to the provisions of section *seventy-nine* the fees payable to medical practitioners for services rendered in connection with any matter under this Act;
  - (e) the fees payable to advocates and attorneys for services rendered in connection with any matter under this Act;
  - (f) the procedure to be followed in paying assessments and penalties to the commissioner;
  - (g) the persons to whom, the places at which, and the method by which payments of assessments under this Act shall be made;
  - (h) the determination of the amount and the conditions and manner of

payment of benefits payable to assessors or classes of assessors in terms of section *thirty-four*;

[Para. (h) substituted by s. 29 (a) of Act 51 of 1956.]

- (i) the disposal of moneys payable to any person (other than the commissioner) under this Act or the Workmen's Compensation Act, 1934 (Act 59 of 1934), and not claimed by the person entitled thereto within a prescribed period;

[Para. (i) amended by s. 29 (b) of Act 51 of 1956 and by Proclamation 45 of 1990.]

- (j) all other matters which by this Act are required or permitted to be prescribed;

- (k) any matter which he may deem necessary or expedient to prescribe in order to further the objects of this Act.

[Para. (k) added by s. 31 (a) of Act 29 of 1984.]

[Sub-s. (1) amended by s. 46 of Act 97 of 1986.]

(2) Different regulations may be made under subsection (1) in respect of different classes of employers and workmen and of different areas, and in making such regulations the Minister may apply such method of discrimination or differentiation as he may deem advisable.

[Sub-s. (2) amended by s. 46 of Act 97 of 1986.]

(3) Any regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of R200 or imprisonment for a period of six months.

[Sub-s. (3) amended by s. 22 of Act 7 of 1961 and substituted by s. 31 (b) of Act 29 of 1984.]

## 108 .....

[S. 108 repealed by s. 59 of Act 39 of 1960.]

**109** Repeals the Workmen's Compensation Act 59 of 1934, and the Workmen's Compensation Amendment Act 38 of 1936.

## 109bis .....

[S. 109bis inserted by s. 30 of Act 51 of 1956, amended by s. 8 of Act 21 of 1964 and repealed by Proclamation 45 of 1990.]

## 110 Short title

This Act shall be called the Workmen's Compensation Act, 1941, and shall commence on a date to be fixed by the State President by proclamation in the *Gazette*: Provided that the provisions of this Act relating to the right to compensation shall not come into operation until a date to be fixed in like manner.

### First Schedule

[First Schedule substituted by s. 23 of Act 7 of 1961.]

Injury	Percentage of Disablement
Loss of two limbs	100
Loss of both hands, or of all fingers and both thumbs	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being permanently bedridden	100
Any other injury causing permanent total disablement	100
Loss of arm at shoulder	65
Loss of arm between elbow and shoulder	65

Loss of arm at elbow	55
Loss of arm between wrist and elbow	55
Loss of hand at wrist	50
Loss of four fingers and thumb of one hand	50
Loss of four fingers	40
Loss of thumb- both phalanges	25
one phalanx	15
Loss of index finger- three phalanges	10
two phalanges	8
one phalanx	5
Loss of middle finger- three phalanges	8
two phalanges	6
one phalanx	4
Loss of ring finger- three phalanges	6
two phalanges	5
one phalanx	3
Loss of little finger- three phalanges	4
two phalanges	3
one phalanx	2
Loss of metacarpals - first, second or third (additional)	4
fourth or fifth (additional)	2
Loss of leg- at hip	70
between knee and hip	45 to 70
below knee	35 to 45
Loss of toes - all	15
Great, both phalanges	7
one phalanx	3
Other than great- four toes	7
three toes	5
two toes	3
one toe	1
Eye: Loss of- whole eye	30
sight of	30
sight of, except perception of light	30
Loss of hearing- both ears	50
one ear	7

Total permanent loss of use of member shall be treated as loss of member.

An injury to the left arm or hand and, in the case of a left-handed workman, to the right arm or hand, may in the discretion of the commissioner be rated at ninety per cent of the above percentage.

Where there are two or more injuries the sum of the percentages for such injuries

may be increased, in the discretion of the commissioner.

### Second Schedule

[Second Schedule amended by Proclamation 147 of 1951, by Proclamation 63 of 1952, by Proclamation 170 of 1959, by Proclamation R90 of 1962, by Proclamation R98 of 1973, by Proclamation 233 of 1979 and by GN 3311 of 1992.]

DESCRIPTION OF DISEASE	DESCRIPTION OF OCCUPATION
Ankylostomiasis (hookworm) in workmen other than Asiatics or Blacks	Mining carried on underground.
Anthrax	The handling of wool, hair, bristles, hides and skins. Work in connection with animals infected with anthrax. Loading, unloading or transport of goods.
Arsenical poisoning	Any work involving the use of arsenic or its preparations or compounds.
Poisoning by benzene or its homologues and their nitro and amino derivatives and its sequelae	Any work involving the production or use of or contact with benzene or its homologues or their nitro and amino derivatives
Cyanide rash	The handling of cyanide or any work involving the use of cyanide.
Dermatitis due to dust, liquids or other external agents present in the specific process or processes of the workman's occupation	...
Halogen derivatives of hydro-carbons, poisoning by the	Any work involving the manufacture or use of or contact with the halogen derivatives of hydro-carbons.
Lead poisoning or its sequelae	The handling of lead or its preparations or compounds or any work involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae	Any work involving the use of mercury or its preparations or compounds.
Pathological manifestations due to radium and other radioactive substances or X-rays	Any work involving the use or exposure to the action of radium or other radioactive substances or X-rays.
Phosphorus poisoning	Any work involving the use of phosphorus or its preparations or compounds.
Silicosis, asbestos or other fibrosis of the lungs caused by dust	Any occupation (other than a 'dusty atmosphere' as defined in the mineral Pneumoconiosis Act, 1956), in which workmen are exposed to the inhalation of silica dust, asbestos dust or other mineral dust.
Primary epitheliomatous cancer of the skin	Any work involving the handling or use of tar, pitch, bitumen, mineral oil or paraffin.
Manganese poisoning	Any work involving the use or handling of, or exposure to the fumes, dust or vapour of, manganese or a compound of or substance containing manganese.
Byssinosis	Any occupation in which a workman is exposed to the inhalation of cotton or linen dust.
Mesothelioma	Any work which involves the handling or use of asbestos or exposing the workman to asbestos dust caused by the use of asbestos in connection with the employer's business.

Occupational asthma	<p>Any occupation in which a workman is exposed to the inhalation of one of the following sensitising agents which leads to the development of the disease:</p> <ol style="list-style-type: none"> <li>1. Isocyanates.</li> <li>2. Platinum, nickel, cobalt, vanadium and chromium salts.</li> <li>3. Hardening agents including epoxy resins.</li> <li>4. Acrylic acid and derived acrylates.</li> <li>5. Soldering and welding fumes.</li> <li>6. Substances originating from animals and insects.</li> <li>7. Fungi and spores.</li> <li>8. Proteolytic enzymes.</li> <li>9. Any organic dust including dust from wood, tobacco, grain and grain flour.</li> <li>10. Exposure to vapours and fumes of formaldehyde, anhydrides, amines and diamines.</li> </ol>
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<sup>i</sup>R55 068 per year with effect from 1 March 1993 - GN 223 (*GG 14586*) of 19 February 1993.

<sup>ii</sup>R55 068 per year with effect from 1 March 1993 - GN 223 (*GG 14586*) of 19 February 1993.

<sup>iii</sup>R4 589 with effect from 1 March 1993 - GN 224 (*GG 14586*) of 19 February 1993.

<sup>iv</sup>R4 589 with effect from 1 March 1993 - GN 224 (*GG 14586*) of 19 February 1993

<sup>v</sup>R2 570 with effect from 1 March 1993 - GN 224 (*GG 14586*) of 19 February 1993.

<sup>vi</sup> For accidents which occurred before 1 April 1960 and occupational diseases which were diagnosed before 1 April 1960 by 22.1%

For accidents which occurred from 1 April 1960 up to 31 March 1961 and occupational diseases which were diagnosed from 1 April 1960 up to 31 March 1961 by 21.9%;

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All pensions payable in respect of accidents which occurred before 1 April 2004 as well as occupational diseases which were diagnosed before 1 April 2004 with effect from 1 April 2005 by 4.8%.

#### **NOTE**

The following benefit increases will apply for all Federated Employers' Mutual Assurance Company Limited (FEMA) pensioners:

\* For accidents prior to 1 April 2003 and occupational diseases which were diagnosed before 1 April 2003 compensation below the 2003 minimum will be increased to the minimum compensation with effect from 1 April 2005 (based on the 2003 minimum wages per week of R313.62)

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GN 200 (GG 27375) of 11 March 2005 (as corrected by GN 492 (GG 27620) of 27 May 2005.

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<sup>viii</sup>R4 589 with effect from 1 March 1993 - GN 224 (GG 14586) of 19 February 1993

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GN 200 (GG 27375) of 11 March 2005 (as corrected by GN 492 (GG 27620) of 27 May 2005.

<sup>xii</sup>Benefit increased by 6,1% in respect of accidents which occurred before 1 March 2002 as well as occupational diseases which were diagnosed before 1 March 2002 with effect from 1 March 2003 - GN 139 (GG 24294) of 3 February 2003.

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\* For accidents prior to 1 April 2003 and occupational diseases which were diagnosed before 1 April 2003 compensation below the 2003 minimum will be increased to the minimum compensation with effect from 1 April 2005 (based on the 2003 minimum wages per week of R313.62)

\* All pensions payable in respect of accidents which occurred before 1 April 2004 as well as occupational diseases which were diagnosed before 1 April 2004 with effect from 1 April 2005 will be increased by 4.8%.

GN 200 (GG 27375) of 11 March 2005 (as corrected by GN 492 (GG 27620) of 27 May 2005.

<sup>xiv</sup>R3 250 with effect from 1 March 1993 - GN 224 (GG 14586) of 19 February 1993

<sup>xv</sup>With effect from 1 March 1994, 7% in all monthly pensions awarded in respect of

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accidents which happened before 1 March 1993 - GN 394 (GG 15536) of 25 February 1994